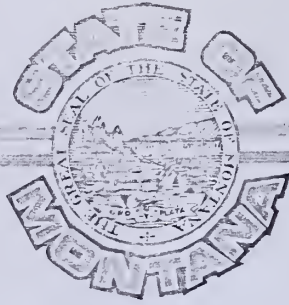


43122

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

LEO BERRY, COMMISSIONER

CAPITOL STATION, HELENA, MT 59601

(406) 449 2074

August 3, 1979

Mr. Donald Crane
Regional Director, Region V
Office of Surface Mining
Dept. of the Interior
Old Post Office--downtown
1823 Stout Street, Room 207
Denver, Colorado 80202

STATE DOCUMENTS COLLECTION

AUG 04 2003

MONTANA STATE LIBRARY
1515 E. 6th AVE.
HELENA MONTANA 59620

Dear Don;

Enclosed is Montana's Permanent Program submission. This material is being formally submitted under 30 CFR Part 731.

If your staff has any questions regarding this submission feel free to contact members of my staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leo Berry, Jr.", written over the typed name.

Leo Berry, Jr., Commissioner
Montana Department of State Lands

DH;lw

enclosures

WIN
86-68390

MONTANA
PERMANENT COAL PROGRAM

submitted to

Donald Crane, Regional Director
Region V
Office of Surface Mining
U.S. Department of the Interior
Old Post Office--downtown
1823 Stout Street, Room 270
Denver, Colorado 80202

in accordance with

30 CFR Part 731

by

THE MONTANA DEPARTMENT OF STATE LANDS
Capitol Station
Helena, Montana 59601

Table of Contents

	Page
List of Tables	i
List of Figures	ii
1. Montana laws and regulations for surface coal mining and for coal prospecting	1
2. Other state laws and regulations affecting coal prospecting and mining in Montana	2
3. Chief legal officer's opinion	3
4. Governor's letter designating state regulatory authority	6
5. Structural organization and coal program duties of the Montana Department of State Lands and the Department of Health and Environmental Sciences	9
6. Intra-agency agreement regarding Montana's coal program	16
7. Narrative description of Montana's proposed permanent program	21
a. Receipt, review, and decision on permit applications	21
b. Assessing fees for permit applications	23
c. Bonding procedures and liability insurance	24
d. Inspection and monitoring procedures	25
e. Enforcement procedures	26
f. Administration and enforcement of permanent program performance standards	27
g. Assessing and collecting civil penalties	28
h. Issuing public notices and holding public hearings	29
i. Coordination of permits with other agencies	31
j. Consultation with agencies having jurisdiction over fish, wildlife, historic, cultural and archaeological resources	31
k. Designation of lands unsuitable program	32
l. Restrictions against financial interests	42



Table of Contents (Cont'd)

	Page
m. Training, examination and certification of blasters	42
n. Providing for public participation in the State program	42
o. Administrative and judicial review of Department of State Lands actions	45
p. Small operator assistance program	46
8. Statistical information on Montana's coal mining and prospecting operations	57
a. Coal tonnage	57
b. Number of mines and mine locations	57
c. Acreage for mine permits and prospecting permits	57
d. Geographic distribution of Montana coal mining and prospecting areas	60
e. Number of permits issued during the last 3 years	63
f. Frequency of DSL mine inspections during the interim program	63
g. Status of reclamation on surface coal mines and coal prospecting operations	64
h. Proposed future coal production and future production areas	64
9. Existing and proposed program staffing levels	66
10. Description of staffing adequacy	67
11. Technical and professional personnel available from other agencies	71
12. Budgetary summary for Montana's coal program	72
13. Physical resources available for use in Montana's coal program	76
14. Other programs administered by the Department of State Lands	79



Appendices

- A - Existing and Proposed Coal Laws and Rules
- B - Other Laws and Regulations Relevant to Coal Mining
- C - Side by Side Comparison of the Federal Act and Rules with the Montana Act
and Rules
- D - Forms Used by the Department of State Lands
- E - Cooperative Agreement



Digitized by the Internet Archive
in 2014

<https://archive.org/details/montanapermanent1979unit>

List of Tables

<u>No.</u>	<u>Page</u>
1. Existing and proposed Montana State program staff	11
2. Montana coal mines, existing and proposed	59
3. Projected demand for Montana coal, 1980-2000	65
4. Budgetary summary of Montana's coal program for FY 1979 through FY 1980 .	73
5. Line-item summaries of Montana's coal program for FY 1979	74
6. Line-item summaries of Montana's coal program for FY 1980	75
7. Equipment owned by the Reclamation Division of the Department of State Lands	77

LIST OF FIGURES

<u>No.</u>	<u>Page</u>
1. Table of organization for the Department of State Lands Permanent Program	10
2. Structural organization chart of the Department of Health and Environmental Sciences	13
3. Structural organization chart of the Environmental Sciences Division of the Department of Health & Environmental Sciences	14
4. Geographic distribution of Montana coal mining areas.	61

1. Montana laws and regulations for surface coal mining and for coal prospecting

Copies of the following existing statutes are contained in Appendix A of Montana's Permanent Program submittal:

The Montana Strip and Underground Mine Reclamation Act
(Part 2, Chapter 4, Title 82, MCA)

The Montana Strip and Underground Mine Siting Act
(Part 1, Chapter 4, Title 82, MCA)

The Montana Coal Conservation Act (Part 1, Chapter 3,
Title 82, MCA)

The Montana Department of State Lands' Rules and
Regulations adopted pursuant to the Montana Strip and
Underground Mine Reclamation Act (ARM, Title 26, Chapter
10, Subchapter 10)

The Montana Department of State Lands' Rules and
Regulations adopted pursuant to the Montana Strip and
Underground Mine Siting Act (ARM, Title 26, Chapter 10,
Subchapter 18)

The Montana Department of State Lands' Rules and Regulations
adopted pursuant to the Montana Coal Conservation Act
(ARM, Title 26, Chapter 10, Subchapter 14)

The 1979 Montana Legislature passed three bills amending the Montana Strip and Underground Mine Reclamation Act (see Section 3). These three bills include the following and may also be found in Appendix A.

House Bill 739 (Chapter 196, Laws of 1979)

House Bill 406 (Chapter 172, Laws of 1979)

Senate Bill 515 (Chapter 550, Laws of 1979)

The first two of these laws became effective on July 1, 1979. Chapter 550 becomes effective upon OSM's approval of Montana's permanent regulatory program. The Montana Coal Conservation Act was made part of the Montana Strip and Underground Mine Reclamation Act as a result of the passage of Chapter 550.

Lastly, on July 16, 1979, the Montana Department of State Lands adopted new rules pursuant to the Montana Strip and Underground Mine Reclamation Act and Chapter 550. These may also be found in Appendix A. With the exception of Rules XVI and XXI which will become effective in the near future (as soon as they are published) these rules will become effective at the same time as Chapter 550.

2. Other state laws and regulations affecting coal prospecting and mining in Montana (30 CFR 731.14(b))

Other state laws and regulations directly affecting the regulation of coal exploration and surface coal mining and reclamation operations in Montana are listed below:

Article II of the Montana Constitution

Section 9 - Right to Know

Section 11 - Disposition of Public Trust Land

Section 1-1-204 MCA - General provisions for use of Montana Codes. Terms denoting state of mind.

Section 1-1-302 MCA - General laws and definitions of Montana Codes. Computation of time.

Title 27, Chapter 19, Part 3 MCA - Provisions for injunctions.

Section 76-1-113 MCA - Preventing a planning board from zoning against mining.

Section 76-2-209 MCA - Preventing County Commissioners from zoning against mining.

Section 77-2-313 MCA - Designating certain state lands subject to taxation.

Section 77-2-231 MCA - Allowing the sale of state lands.

Section 45-12-312 MCA - Accountability for conduct of a corporation.

Title 82, Chapter 4, Part 4 MCA - Montana Opencut Mining Act.

Title 82, Chapter 4, Part 3 MCA - Montana Hard Rock Mining Act.

Title 2, Chapter 15, Part 32 MCA - Formation of the Department of State Lands.

Title 75, Chapter 2 MCA - The Clean Air Act of Montana.

Title 75, Chapter 5 MCA - The Montana Water Quality Act.

Title 2, Chapter 4, Part 6 MCA - Contested cases.

Title 2, Chapter 4, Part 7 MCA - Judicial review.

ARM Title 16, Chapter 14, Subchapter 10 - The Montana Department of Health and Environmental Sciences rules adopted pursuant to the Montana Water Quality Act.

ARM Title 16, Chapter 14, Subchapter 1 - The Montana Department of Health and Environmental Sciences rules adopted pursuant to the Clean Air Act of Montana.

Copies of each of these laws and regulations may be found in Appendix B of this permanent program submittal.

3. Chief legal officer's opinion [30 CFR 731.14(c)]

On the following page is a copy of the Department of State Lands' chief legal officers opinion indicating that Montana has or will have the authority to implement, administer and enforce a permanent coal program in compliance with P.L. 95-87 and 30 CFR Chapter VII. Included by reference as a part of this opinion is a section by section comparison of Montana's coal reclamation laws and rules, as amended, with P.L. 95-87 and 30 CFR Chapter VII. This section by section comparison is found in Appendix C.



DEPARTMENT OF STATE LANDS

CAPITOL STATION, HELENA, MT 59601

THOMAS L. JUDGE, GOVERNOR

(406) 449-2074

LEO BERRY, COMMISSIONER



July 30, 1979

Mr. Donald Crane
Director, Region V
Office of Surface Mining
Dept. of the Interior
Old Post Office--downtown
1823 Stout Street, Rm. 270
Denver, Colorado 80202

Dear Mr. Crane:

Thirty C.F.R. 731.14(c) requires that a state permanent program submission contain an opinion of the state attorney general or the regulatory authority's chief legal officer indicating that the state has or will have authority to implement, administer, and enforce a program in compliance with P.L. 95-87 and 30 C.F.R, Chapter VII. As chief legal officer for the Department of State Lands, I am submitting this opinion to fulfill that requirement. By this reference Appendix C of the Montana Permanent Program submittal is incorporated herein.

As you are aware, Montana's basic coal mine regulatory statute is the Montana Strip and Underground Mine Reclamation Act, which is contained in Part 2, Chapter 4, Title 82, Montana Code Annotated (M.C.A.). The 1979 Montana Legislature passed three bills amending that act. In H.B. 739 (Chapter 196, Laws of 1979), it made certain housekeeping changes. In H.B. 406 (Chapter 172, Laws of 1979), it allowed for alternate revegetation. In S.B. 515 (Chapter 550, Laws of 1979), it revised the act to comply with Public Law 95-87. The first two of these laws became effective on July 1, 1979. Chapter 550 becomes effective upon OSM's approval of Montana's permanent regulatory program. Therefore, the comparison of the Montana statute to the federal statute, which is contained in Appendix C, references the act as amended by those three laws. The comparison demonstrates that, upon federal approval of its program, Montana under its law will have the same or more extensive authority than the Office of Surface Mining under Public Law 95-87.



July 30, 1979
Mr. Donald Crane
Page Two

Also included in Appendix C is a comparison of the state law and rules to the federal rules. The state rules referenced to were adopted on July 16, 1979. With the exception of Rules XVI and XXI, which will become effective in the near future, these rules become effective at the same time as Chapter 550. As demonstrated in the comparison, the state rules, along with certain portions of the Montana act which have not been repeated in the rules, provide a regulatory scheme consistent with the federal regulations.

Therefore, it is my opinion that, pursuant to the Montana Strip and Underground Mine Reclamation Act as amended by the 1979 Montana Legislature, and Rules I through XXXI contained in Appendix C, the Department of State Lands will, upon approval of Montana's permanent regulatory program by the Office of Surface Mining, have authority to implement, administer, and enforce a program and to regulate coal exploration and surface coal mining and reclamation operations in accordance with Public Law 95-87 and consistent with 30 C.F.R., Chapter VII.

Sincerely,



John F. North, Chief
Legal Counsel
Department of State Lands

lw



4. Governor's letter designating state regulatory authority
[30 CFR 731.14(d)]

On the following page is a copy of a letter from the Governor of Montana to the Director of OSM designating the Montana Department of State Lands as the state regulatory authority for Montana and authorizing the Department to receive and administer grants under 30 CFR 725 and 30 CFR 740.



State of Montana
Office of The Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

February 23, 1978

Mr. Walter N. Heine, Director
Office of Surface Mining
Department of Interior
Room 7348
Washington, D.C. 20204

Dear Mr. Heine,

On January 20, 1978, I designated the Montana Department of State Lands as the state agency to enforce the Initial Regulatory Period performance standards of the Surface Mining Control and Reclamation Act of 1977. As required by this Act and the Department of Interior rules adopted pursuant to the Act, I appoint the Department of State Lands to be the state agency to:

1. Submit grant applications, and to receive and administer grants as described in Part 725 of the Initial Regulatory Period Rules. Part 725 concerns reimbursement to the states for the costs of enforcing the initial performance standards.
2. Submit grant applications and to receive and administer grants as described in Part 740 of the Initial Regulatory Period Rules. Part 740 concerns grants to states to:
 - (a) Develop state programs for the regulation and control of surface coal mining and reclamation operation;
 - (b) Administer and enforce State programs for the regulation and control of surface coal mining and reclamation operations; and
 - (c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.



In designating the Montana Department of State Lands as the administering agency, it must be understood that the Department of Health and Environmental Sciences and possibly other state agencies will be consulted and reimbursed for their part in enforcing the Surface Mining Control and Reclamation Act in Montana.

Leo Berry, Jr., the Commissioner of the Department of State Lands, is Montana's point of contact regarding grants and all other provisions of this Act.

Sincerely,

THOMAS L. JUDGE
Governor



5. Structural organization and coal program duties of the Montana Department of State Lands and Department of Health and Environmental Sciences

A structural organization chart indicating the lines of authority within the Department of State Lands is shown in Figure I. Authority generally flows from staff members to Bureau Chief to Division Administrator to the Commissioner. A listing of departmental positions involved with Montana's coal program and their duties are shown in Table 1.

The State Board of Land Commissioners (Board) consists of the Governor, the Attorney General, Superintendent of Public Instruction, State Auditor and Secretary of State. The Department of State Lands (DSL) acts under the direction of the Board and administers the laws charged to the Board. The State Lands' Commissioner is the Chief Administrative Officer of the Department. The Board of Land Commissioners delegated all of its permitting and enforcement authority with regards to Montana's mined land reclamation statutes to the Commissioner of State Lands. The Commissioner is appointed by and serves at the pleasure of the Governor.

DSL has two primary duties; one is the management of state-owned lands, the second is administration of state and federal mined land reclamation statutes. In accordance with such duties, the Department is organized into a Land Administration Division, a Reclamation Division and a Centralized Services Division. The Department of State Lands was appointed by the Governor as the state regulatory authority to implement P.L. 95-87 (see Section 4).

DSL's Land Administration Division oversees the leasing, sale, exchange, improvements, and overall management of state-owned lands.

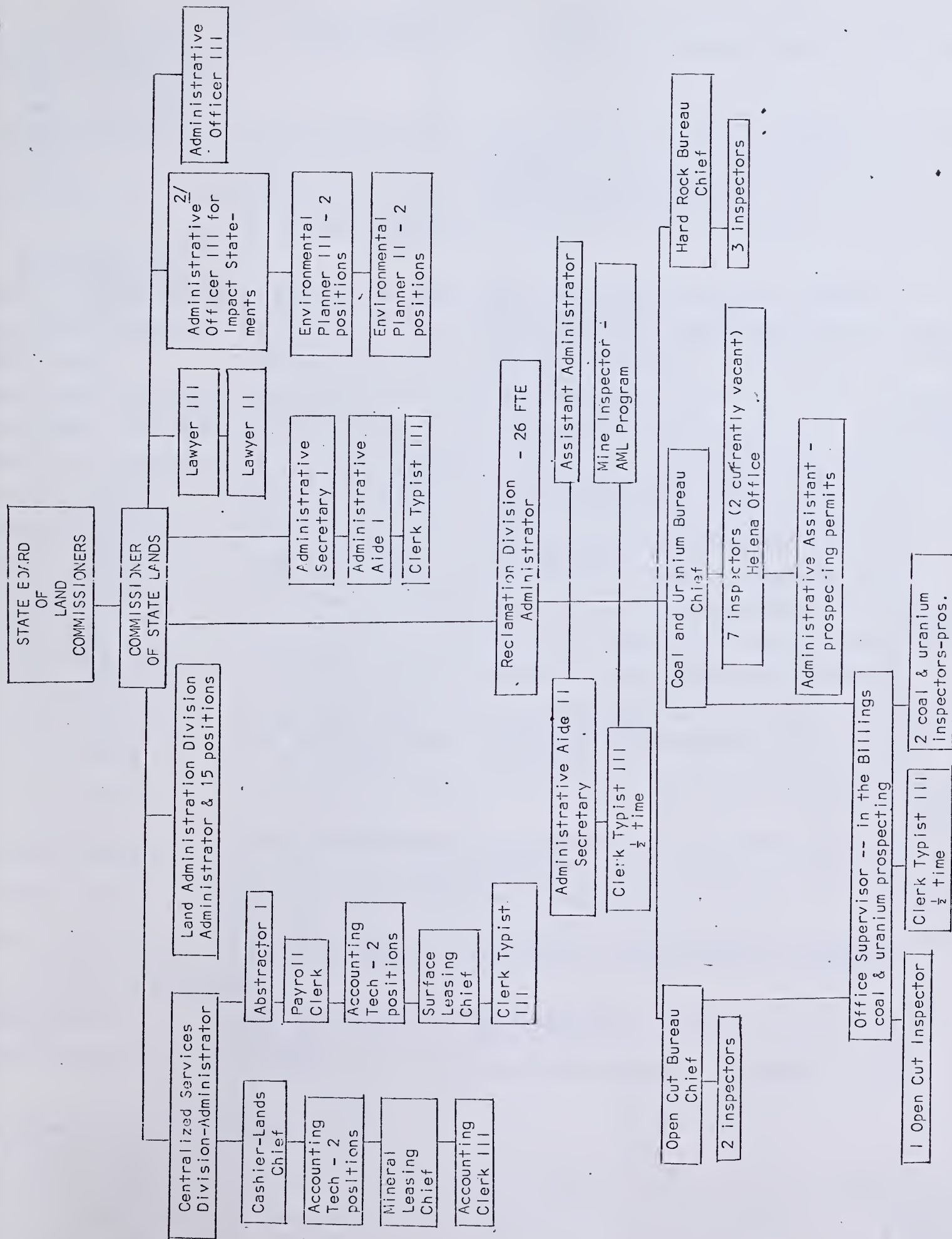
DSL's Centralized Services Division handles the processing of lease and royalty payments on state lands. It is also responsible for such Departmental business as accounting, budgeting, and the processing of employee pay and benefits. The Centralized Services Division administers OSM grant monies for the Reclamation Division and assists the Reclamation Division in budgeting.

The Reclamation Division of DSL administers Montana's mined land reclamation statutes including the Montana Strip and Underground Mine Reclamation Act (coal and uranium), the Montana Strip and Underground Mine Siting Act (coal and uranium), the Montana Opencut Mining Act (sand, gravel, scoria, bentonite, clay and phosphate) and the Montana Hard Rock Mining Act. Copies of Montana's coal reclamation statutes are included in Appendix A.

In addition to the three divisions, the Commissioner of State Lands Department has a special staff that currently includes an administrative officer III, an administrative officer in charge of environmental assessments, 4 environmental planners, two attorneys, an administrative secretary, administrative aide, and a clerk typist. Members of the Commissioner's staff involved with Montana's coal reclamation program and their duties are shown on Table 1.



Figure 1 - Table of organization - Department of State Lands - Permanent Program^{1/}



^{1/} All positions are filled as of August 3, 1979 except where vacancies are noted.

^{2/} Administratively part of Commissioners staff but paid by Reclamation Division funding.

Table 1 - Existing and Proposed Montana State Program Staff [30 CFR 731.14(i)]
(all positions are filled on August 3, 1979 unless otherwise noted)

Pay Classification	Minimum Education and Experience	Primary Function in Coal Program	Other
<u>DEPARTMENT OF STATE LANDS</u>			
<u>Commissioner's staff</u>			
Commissioner, D.S.L.	Appointed by Governor	Chief executive officer of Dept., signs all permits	
Lawyer III	Law degree	Chief legal counsel, statute and rule drafting, violations and public notices	
Admn. Officer III	B.S. in nat. res. field and 2 yrs. experience	Admn. environmental assessment program	
<u>Reclamation Division</u>			
Admn., Reclamation Division	B.S. in nat. res. field and 3 yrs. exper.	Admn. coal program, recommendations to Commissioner, OSM liaison	
Asst. Admn., Reclamation Div.	B.S. in nat. res. field and 3 yrs. exper.	Designation of lands unsuitable program, wild-life biologist, inspections, OSM liaison	OSM funded position
Admn. Aide II	High school educ. and 2 yrs. secretary exp.	Administrative secretary	
Clerk Typist III (1/2 time)	High school educ., typing skill	Clerk typist in Helena office	OSM funded position
Clerk Typist III (1/2 time)	High school educ., typing skill	Clerk typist in Billings office	OSM funded position
Chief, Coal & Uranium Bureau	B.S. in nat. res. field and 3 yrs. exper.	Coordinates permit review and inspections, OSM liaison, rule drafting	
Mine Recl. Inspector V, Coal and Uranium	Engineering degree and 1 yr. exper.	Mine engineering, permit review, inspections, SOAP	
Mine Recl. Inspector IV, Coal and Uranium	B.S. in nat. res. field and 3 yrs. exper.	Office supervisor--Billings, prospecting review and inspections	
Mine Recl. Inspector IV, Coal and Uranium	B.S. in nat. res. field and 3 yrs. exper.	Soil scientist, permit review, inspections, SOAP	
Mine Recl. Inspector IV, Coal and Uranium	B.S. in nat. res. field and 3 yrs. exper.	Admn. abandoned mine land recl. program	OSM funded position
Mine Recl. Inspector III, Coal and Uranium	B.S. in nat. res. field and 2 yrs. exper.	Hydrogeologist, permit review, inspections, SOAP	
Mine Recl. Inspector III, Coal and Uranium	B.S. in nat. res. field and 2 yrs. exper.	Hydrogeologist, permit review, inspections, SOAP	
Mine Recl. Inspector III, Coal and Uranium	B.S. in nat. res. field and 2 yrs. exper.	Soil and plant scientist, permit review, inspections, SOAP	OSM funded position
Mine Recl. Inspector II, Coal and Uranium	B.S. in nat. res. field and 1 yr. exper.	Range sciences, prospecting review and inspections	
Mine Recl. Inspector II, Coal and Uranium	B.S. in nat. res. field and 1 yr. exper.	Blasting specialist, permit review, inspections	Currently vacant To be funded by an OSM permanent program
Mine Recl. Inspector I, Coal and Uranium	B.S. in nat. res. field	Geologist for prospecting, permit review and inspections	
Mine Recl. Inspector I, Coal and Uranium	B.S. in nat. res. field	Either wildlife biologist, or plant ecologist	Currently vacant To be funded by an OSM permanent program
Administrative Assistant	B.A. or B.S. degree	Permit analyst, prospecting review and inspection	
<u>Centralized Services Division</u>			
Account II	B.A. in accounting	Accounting, cost flow analysis	
Payroll Clerk I	H.S. educ. and 2 yrs. exper.	Payroll clerk	
Accounting Tech I	H.S. educ.	Processing travel claims and paying bills	
<u>DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES</u>			
<u>Air Quality Bureau</u>			
Sanitary engineer	Engineering degree and 1 yr. exper.	Air quality specialist, permit review, inspections	Currently vacant To be funded by an OSM permanent program



The Reclamation Division has administered the initial regulatory program of P.L. 95-87 since February 3, 1978, and it is responsible for developing and administering the permanent regulatory program. The Reclamation Division is also responsible for carrying out the provisions of a Cooperative Agreement with the Department of Interior to regulate surface coal mining operations on Federal lands. This agreement was signed by the Governor of Montana, the Commissioner of State Lands and the Secretary of Interior on October 18, 1978. Lastly, the Reclamation Division is responsible for developing and administering Montana's Abandoned Mine Land Reclamation Program (AML).

Structural organization charts indicating the lines of authority for the Department of Health and Environmental Sciences (DHES) and of the Environmental Sciences Division of DHES are shown on Figures 2 and 3. A copy of an interagency agreement between DHES and DSL with regards to the administration of Montana's coal program is included in Section 6.

The Department of Health and Environmental Sciences (DHES) has a small, but important role to play in the administration of Montana's coal program. The Department of State Lands (DSL) depends upon the DHES Laboratory Division to analyze water quality samples collected from drainageways, sediment ponds and other areas on or adjacent to coal mines. DSL inspectors have been trained in the proper techniques for collecting and preserving water samples so that it is not necessary for a DHES inspector to be present at the mine site in order for a water quality sample to be collected. Water quality samples are reported back to DSL's Reclamation Division which then takes appropriate action under the Montana Strip and Underground Mine Reclamation Act. No changes are expected in this process when the permanent program goes into effect. The Laboratory Division is the only part of DHES that now has a direct role to play in the administration of Montana's coal program.

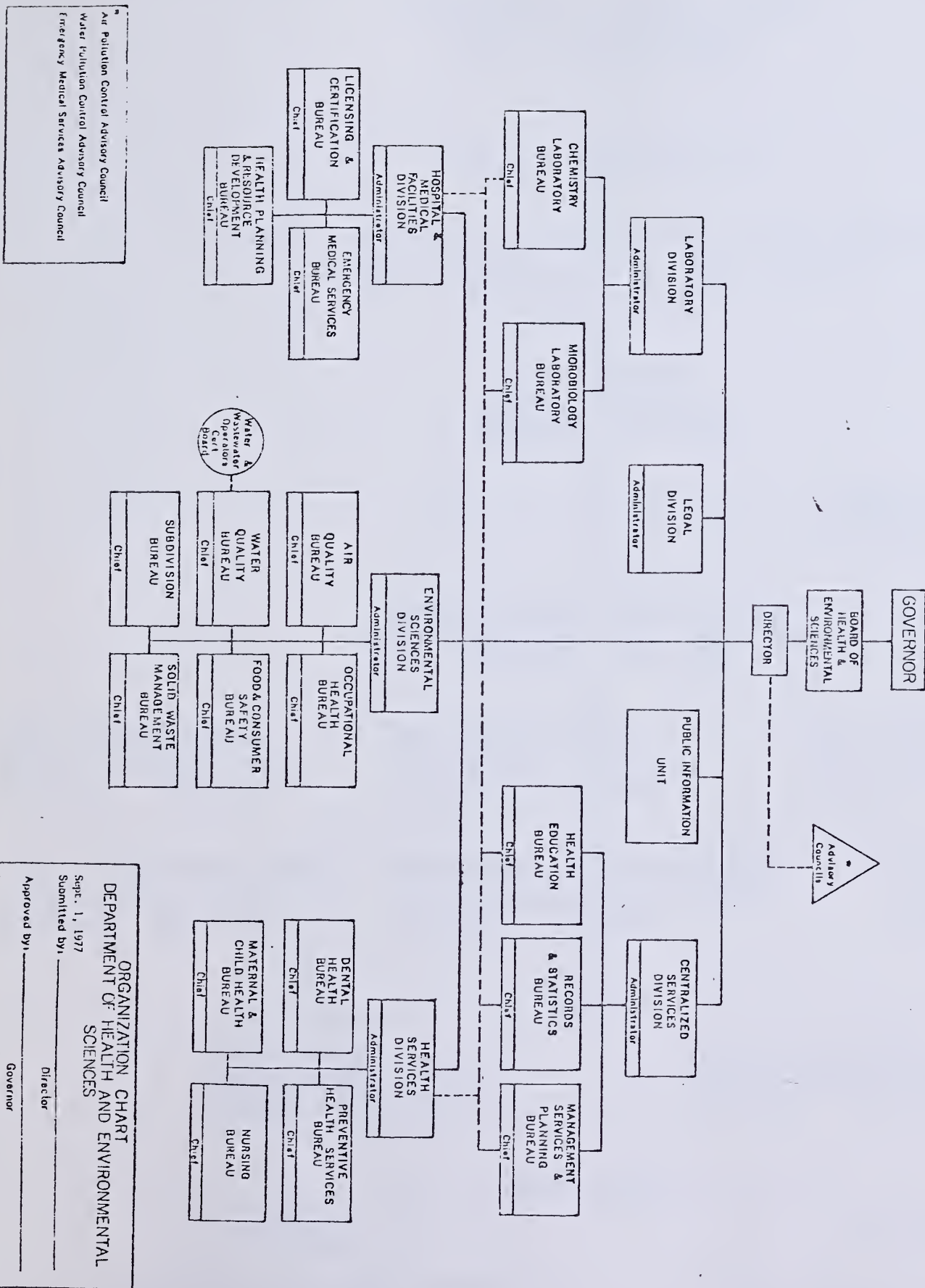
The Water Quality and Air Quality Bureau of the Environmental Sciences Division of DHES have duties independent of the Department of State Lands, with regards to enforcing environmental standards at Montana's coal mines.

The Water Quality Bureau of DHES enforces the Montana Water Quality Act (see Appendix B) and pursuant rules by issuing Montana Pollutant Discharges Elimination System (MPDES) permits for coal mine discharges. Coal companies are required to self monitor in accordance with their MPDES permits. In addition, Water Quality Bureau inspectors periodically spot check mine discharges for MPDES permit compliance. Copies of all water quality sampling results pursuant to an MPDES permit are sent to both DHES and the Department of State Lands by the coal company. As previously stated, each agency takes separate enforcement action with regards to water quality noncompliances.

The Water Quality Bureau of DHES has a Permits and Enforcement Section which handles surveillance through inspections and wastewater monitoring, wastewater discharge permits to surface waters, and enforcement coordination. The permits section is headed by a sanitary engineer and he has a chemist who works on enforcement coordination, a chemist who assists on permit issuance and a biologist who does the monitoring and inspections. Support is provided by the a Bureau water resources engineer experienced in hydrogeology, an EPA environmental engineer, and the Legal and Chemistry Divisions of DHES.



Figure 2 - Structural organization chart of the Department of Health and Environmental Sciences



ORGANIZATION CHART
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
 Sept. 1, 1977
 Submitted by: _____
 Approved by: _____
 Director
 Governor



Figure 3-- Montana Department of Health and Environmental Sciences

ENVIRONMENTAL SCIENCES DIVISION
Board of Health Building
Helena, Montana 59601

Thomas L. Judge, Governor

Montana Department of Health and Environmental Sciences
Arthur C. Knight, F.C.C.P., M.D., Director
Telephone: 449-2544

John W. Bartlett
Deputy Director
Telephone: 449-2544

Legal Division
Telephone: 449-2630

ENVIRONMENTAL SCIENCES DIVISION
Donald G. Willemis, P.E., Administrator
Telephone: 449-3946

Water Quality Bureau
Steven L. Pilcher, Chief
Telephone: 449-2406

Air Quality Bureau
Mike Roach, P.E., Chief
Telephone: 449-3454

Food & Consumer Safety Bureau
Vern Sloulin, R.S., Chief
Telephone: 449-2408

Occupational Health Bureau
Larry L. Lloyd, Chief
Telephone: 449-3671

Solid Waste Management Bureau
Duane Robertson, R.S., Chief
Telephone: 449-2821

Subdivision Bureau
Ed Casne, P.E., Chief
Telephone: 449-3946

Sections:

Fiscal Control
Dennis Thurston, Head
Telephone: 449-3454

Environmental Impact Statements
Thomas Ellerhoff, Head
Telephone: 449-3946

Branch Offices:

Kalispell

Wilbur Aikin, P.E., Water Quality &
Branch Office Manager
3 Sunset Plaza
Kalispell, Montana 59901
Telephone: 755-5521

Stan Strom, Subdivision
Telephone: 755-5521

Billings

Harry Keltz, P.E., Air Quality &
Branch Office Manager
3304 Second Avenue North
Billings, Montana 59101
Telephone: 252-5697

Frank Gessaman, R.S., Food
Telephone: 252-5697



The Air Quality Bureau of DHES enforces the Montana Clean Air Act and regulations adopted pursuant to this Act (for copies see Appendix B). In addition, the Air Quality Bureau has submitted a state implementation plan to the E.P.A. for approval pursuant to the Federal Clean Air Act.

The Air Quality Bureau of DHES has an Engineering Section which includes four sanitary engineers and a planner. Their primary responsibility is to assess new source permit applications, develop and implement a comprehensive plan for air pollution control and review variance requests. Their Monitoring and Enforcement Section includes six environmental specialists and two equipment repair specialists. The environmental specialists have varied professional backgrounds in the physical and biological sciences. Technical assistance is also provided by a meteorologist and a statistical technician. Support is also provided by the Legal and Chemistry Divisions of DHES. One additional position, an air quality specialist, would be added to the DHES staff for the administration of the permanent program. A description of the duties of this position may be found in Section 9.

The Environmental Sciences Division of DHES has a field office in Billings staffed by engineers, a chemist and a biologist. These individuals do most of the DHES field work in eastern Montana.



6. Intragency agreement regarding Montana's coal program
[30 CFR 731.14(f)]

On the following page is a copy of a letter from the Commissioner of the Montana Department of State Lands to the Deputy Director of the Montana Department of Health and Environmental Sciences (DHES) describing the role that the DHES plays in the administration of Montana's coal program.



DEPARTMENT OF STATE LANDS

CAPITOL STATION, HELENA, MT 59601

THOMAS L. JUDGE, GOVERNOR

(406) 449-2074

LEO BERRY, COMMISSIONER



July 27, 1979

Mr. John W. Bartlett
Deputy Director
Montana Department of
Health & Environmental Sciences
Cogswell Building
Capitol Station
Helena, Montana 59601

Dear John;

For several years, the Department of State Lands has brought water quality samples collected from mine areas to the Department of Health's Laboratory Division to be analyzed. Results are reported to this agency which then takes appropriate action under Montana mined land reclamation statutes should a violation of a statute have occurred. Both Montana's Cooperative Agreement with the Department of the Interior for the regulation of coal mine reclamation on Federal Lands and our proposed permanent regulatory program for the administration of the Federal Strip Mining Act require that Montana has adequate laboratory facilities to analyze water quality samples. Accordingly, I wish to affirm that our working relationship with Health's Laboratory Division will continue.

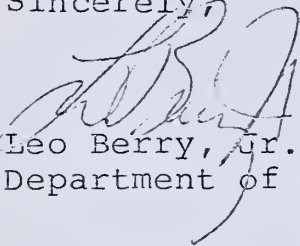
A related matter is that pursuant to our proposed permanent coal program, this Department will apply for funding from the Department of Interior for an air quality specialist. Such a specialist is required as a result of changes in the Montana Strip and Underground Mine Reclamation Act approved by the 1979 legislature and prompted by Montana's desire to retain state control over the regulation of coal mine reclamation in this state. The specialist's duties would include review of air quality control measures and air quality monitoring at each of Montana's coal mines. For the sake of government efficiency, we would like to have the air quality specialist hired by your agency (providing an FTE is available) and assigned to the Department of State Lands. We would be able to provide office space for such an individual.

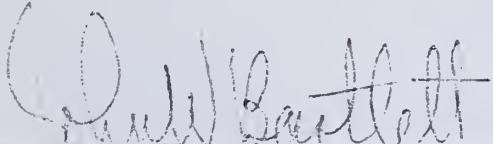
It is understood, that the Department of Health and Environmental Sciences will continue to enforce all state air and water quality statutes as they apply to coal strip mining.



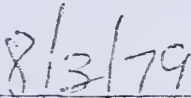
If you concur with the statement in this letter, please sign on the line below and thanks for your assistance in helping this agency administer Montana's mined land reclamation statutes.

Sincerely,


Leo Berry, Jr., Commissioner
Department of State Lands



John Bartlett, Deputy Director
Department of Health & Environmental
Sciences



Date

BH:lw

c: Brace Hayden





Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A. C. Knight, M.D., F.C.C.P.
Director

August 3, 1979

Leo Berry, Jr.
Commissioner
Department of State Lands
Capitol Station
Helena, MT 59601

RE: Federal Strip Mining Act

Dear Leo:

I have reviewed your request for continued laboratory support and the use of an air specialist with various individuals and bureaus within the Department of Health. The cooperative agreement whereby Health's laboratory division analyzes water quality samples for the Department of State Lands can continue as it has. Our laboratory has the capability to meet most requirements for the analysis of water quality samples.

Your request to fund an air quality specialist to be hired by the Department of Health has been reviewed by the Air Quality Bureau. It is our understanding that the individual for this proposed position would be hired by the Department of Health and funded and housed by the Department of State Lands. The position would receive general direction, guidance and training from the Air Quality Bureau, but day to day direction would be administered by State Lands. Ultimately, however, the enforcement of any air quality regulation or standards would be through the Air Quality Bureau under authority delegated by the State and Federal Clean Air Acts and that the individual would act as the agent for the Bureau in this regard.

We believe that the individual should be an engineer, the minimum starting level of a grade 15. The position would be responsible for the review of air quality control and monitoring needs under the Federal Strip Mining Act and also implement the permit requirements of the Montana Clean Air Act on coal mines. We agree with you that this provides an efficient and integrated approach in meeting both of our responsibilities.

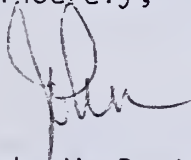
If our understanding of the needs and requirements are mutual, we will utilize the modified FTE that has been agreed upon with the Office of Budget and Program Planning.



Leo Berry, Jr.
August 3, 1979
Page 2

I have attempted to clarify my understanding of your letter of July 27, 1979, to me. If my understanding is correct as outlined in this letter, then I concur with your statements and the Department of Health will provide support to the Department of State Lands in the analysis of water quality samples and the employment of an air quality engineer.

Sincerely,

A handwritten signature in cursive script, appearing to read "John W. Bartlett".

John W. Bartlett
Deputy Director

pmd

7. Narrative description of Montana's proposed permanent program (30 CFR 731.14(g))

Program areas discussed in this section follow 30 CFR 731.14(g)(1) through 30 CFR 731.14(g)(16). The section is referenced to applicable portions of the Montana Strip and Underground Mine Reclamation Act and the Department's permanent program rules. When referencing a portion of the Montana Act amended by Senate Bill 515, "SB 515" is placed in parenthesis after the reference. Copies of all State laws and rules referenced in this section are found in Appendix A.

Should the reader wish to find a cross reference to corresponding portions of P.L. 95-87 or 30 CFR, Chapter VII, these may be found by checking Appendix C.

a. Receipt, review and decision on permit applications

1. Coal exploration

All coal prospecting activities in Montana must be permitted, regardless of the amount of coal removed (82-4-226 MCA). Prospecting is defined in 82-4-203 MCA. A prospecting application must be submitted in accordance with 82-4-226(2) and Rule XIX. A fee of \$100 must be submitted with each application. After an application is received, the proposed area is inspected and the application is reviewed by a departmental staff member to ensure compliance with 82-4-226 MCA and Rule XIX. Where problem situations are anticipated, the application is also reviewed for compliance with the Act and Rules by other appropriate members of DSL's technical staff. As a result of the application review and the on-site inspection, the department has the following options:

1. Approve the permit
2. Deny the permit
3. Deny selected portions of the permit

If selected drill hole sites are unacceptable because they do not meet the criteria in the Act or the Rules, the applicant is usually allowed to relocate the holes in a more acceptable location.

An environmental assessment is written for each prospecting permit application. This is an in-house decision-making document. Prior to permit issuance, each drill hole must also be bonded according to a progressive bonding schedule (see Section 7c). Prospecting permit areas are inspected at irregular intervals to ensure compliance with Montana's Act and Rules. DSL's primary concern during such inspections is to ensure that the holes have been plugged, regraded and properly reseeded.

During the permit period, a permittee must submit monthly reports as outlined in Rule XIX(3)(a) and an annual report as outlined in Rule XXI. A prospecting permit is issued for one year and may be renewed.



If the permittee wishes to renew a prospecting permit, renewal must be requested at least 30 days but not more than 60 days prior to the expiration date. A renewal request must include the requirements outlined in Rule XIX (4). An environmental assessment is also prepared for prospecting permit renewals; however, no permit fee is required.

A prospecting permit may be amended to increase the number of holes on a permit or for hole relocation. A request for an amendment must contain the same information as the original application. Review procedures for an amendment are the same as those for the original permit.

Applications to prospect for more than 250 tons will be handled in the same manner as an application for a strip or underground mine operation. Review, renewal, revision and amendment procedures for such applications are outlined in Rule III and are the same as for a mining permit.

2. Coal mining

Applications for strip or underground mining operations must be submitted in accordance with 82-4-222 MCA and Rule II. "Operation" is defined in 82-4-203 MCA (SB 515). A fee of \$50 must be submitted with each permit application. Applications are reviewed by the department's technical staff as outlined in Rule III (1)(e). Permit applications are reviewed simultaneously for completeness and acceptability, and each professional on the technical staff (see Table 1) reviews that portion of an application within his or her expertise. Applications are "complete" when all the permit application information required by Montana's law and pursuant rules and regulations have been submitted to the department. All data must be of such quality and quantity that further information is not required in order to make a permit decision.

Where a permit application proposes the mining of federal lands, review is conducted pursuant to Montana's existing cooperative agreement with the Department of Interior and the appended Protocol Agreement (See 30 CFR 211 in Appendix E). This cooperative agreement will be modified pursuant to Section 523(c) of P.L. 95-87 after approval of Montana's permanent regulatory program.

Applications involving federal coal are currently reviewed jointly with OSM and OSM's comments on an application are included in the final deficiency letter which DSL sends to an applicant. If the application does not contain federal coal, the department's deficiency letter is sent directly to the applicant. OSM receives a copy of all coal permits issued by DSL. All deficiency letters are sent to an applicant by certified mail.

When deficient or unacceptable portions of an application must be revised, revisions must be submitted in the form of replacement pages to the original application, with the date of revision indicated. Revised applications are reviewed in the same fashion as original applications.

After an application is found to be complete, a decision must be made within 240 days (82-4-231 MCA). The department must either approve or deny an application as outlined in 82-4-231(2) MCA (SB 515) and Rule III(2)(e). Permit selective denial criteria are found in 82-4-227 MCA (SB 515). Permits are issued for 5-year periods and may be renewed.



During the term of a permit, the permit is periodically reviewed in accordance with Rule III(2). Such reviews are conducted by DSL's technical staff.

An operator may apply to add or delete acreage to an approved permit as outlined in 82-4-225 MCA (SB 515) and Rule III(5). The review procedures for an application to add acreage are the same as those for the initial application.

Permit revisions fall into two categories: major and minor. Major revisions are defined in Rule I(37) and are subject to all the provisions of Rule III(1). Major revisions are reviewed by those individuals on the technical staff whose areas of expertise are involved in the revision. A minor revision is reviewed by the person or persons whose professional expertise is involved, or by the bureau chief if the revision is purely administrative.

Permit renewals are made in accordance with 82-4-221 MCA and Rule III(4) and must be submitted between 30 and 60 days of the permit anniversary date. Renewals are reviewed by the entire technical staff.

Bonding requirements for coal permits are described in Section 7c.

The Department of State Lands prepares environmental impact statements on all coal mine permit decisions that constitute a major action of State government that would have a significant effect on the quality of the human environment. Impact statements are prepared in accordance with Chapter 1, Title 75, MCA. An in-house preliminary environmental review is often prepared to determine whether or not an environmental impact statement is necessary. Impact statements for mine proposals involving federal lands are often prepared jointly with the Department of Interior.

Departmental inspection and monitoring procedures for coal mines are described in Section 7d.

b. Assessing fees for permit applications

An applicant for a coal prospecting permit must submit a \$100 application fee pursuant to 82-4-226 MCA. This fee may be used as a credit towards a mining permit if the area covered by the prospecting permit becomes covered by a valid surface or underground mining permit obtained before or at the time the prospecting permit expires. No fees are required for prospecting permit renewals or permit amendments.

An applicant for a coal mining permit must submit a \$50.00 application fee pursuant to 82-4-223 MCA. No fees are required for either minor permit revisions or for permit renewals; however, a \$50 fee is required for major revisions (see 82-4-221, S.B. 515) and permit amendments (see 82-4-225, S.B. 515).



c. Bonding procedures and liability insurance

1. Bonding procedures

Montana's coal program bonding and bond release procedures are clearly described in Sections 82-4-223, and 82-4-235, MCA (S.B. 515) and Section 82-4-240 MCA. Rule XX of the permanent program rules expands upon the procedures authorized by these Sections of the Act.

To ensure that the conditions of a coal prospecting or mining permit are carried out, a performance bond must be filed with the permit application for an amount based on the characteristics of the area to be mined (82-4-223, S.B. 515) MCA). Bonding rates are determined by DSL and bonds are filed with DSL. A performance bond may be neither less than \$200 nor more than \$10,000 provided that such an amount is not less than the amount required for the state to undertake the work described in the reclamation plan. Because of this provision, performance bonds for some mine areas have been as high as \$16,000 per acre with the average being about \$4,000 per acre. DSL has established 3 separate levels for bonding different coal mine areas: mining; facilities and associated disturbance.

For a prospecting permit application, bonds are set on a "dollars per hole basis". The general departmental guidelines for drill hole bonding is as follows:

\$2,500 for first hole;
\$1,000/hole for next 4 holes;
\$500/hole for next 10 holes; and
\$100/hole for all holes thereafter.

When mud pit excavations are necessary, an extra bond of \$100 is set for each excavation. General procedures for the determination of bond amounts are given in paragraph 2 of Rule XX.

DSL may accept a collateral bond, certificate of deposit, or letter of credit in place of a surety bond. Restrictions on each of these are described in Rule XX. Appendix D of this submittal contains a copy of DSL's performance bond form.

Return of a bond is contingent on the mine operator's faithful performance in meeting the reclamation requirements of Part 2, Chapter 4, Title 82 MCA. A procedure for partial bond release is described in permanent program Rule XX, paragraph 11; however in no case, may a performance bond be totally released sooner than 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work on the reclamation area (82-4-235, S.B. 515). Rule XX also describes procedures used for hearings on bond release applications and procedures for bond forfeiture. Prospecting bond release procedures are the same as those described for coal mines.



2. Liability insurance

Liability insurance requirements are described in 82-4-222(5) MCA (S.B. 515) and in permanent program Rule XX, paragraph (14). Section 82-4-222(5) MCA (S.B. 515) requires that all coal operators carry a public liability insurance policy and Rule XX(14) sets the minimum coverage limits for such a policy.

d. Inspection and monitoring procedures

Sections 82-4-204, 82-4-221(2), 82-4-231(2) MCA (S.B. 515) describe DSL procedures for coal mine inspections. Permanent program Rule XXIV expands upon the procedures authorized by these Sections of the Act.

On an annual basis approximately 25 percent of the staff time involving Montana's Coal Reclamation Program is spent on coal mine inspection trips. Rule XXIV(1) requires an inspection frequency of at least one partial inspection of each mining operation per month and at least one complete inspection of each operation per calendar quarter. Past inspection frequency by DSL personnel has far exceeded this requirement. Considerable staff time is also spent inspecting potential new mine areas whether they be proposed expansions of existing mines or proposed new mines.

Prior to making a inspection, an inspector must familiarize himself with the approved mining or reclamation plans, with any proposed changes to such, and with recent inspection reports. It is Departmental policy to rotate different inspectors on mine inspection trips. In this way the mine is viewed through different sets of eyes and by individuals with different professional training. Inspection schedules are coordinated by the coal bureau chief. Often times a thorough mine inspection takes a day or longer to complete.

Details considered during mine inspections are included on the inspection report form found in Appendix D. This checklist is completed for every mine inspection. When problem situations are noted, they are, when possible, immediately brought to the attention of company officials or are described in a post inspection letter. Upon returning to the office, problems and appropriate courses of action are discussed with the coal bureau chief and division administrator, and, if a noncompliance is involved, the Departmental attorney and Commissioner.

All proposed prospecting permit areas are inspected before a permit is issued (see Section 7(a)(1) of this submission). After issuance, such areas are then inspected at irregular intervals to ensure compliance with Montana's Act and Rules. DSL's primary concern during such prospecting permit inspections is to ensure that the holes have been plugged, regraded and properly reseeded.



All inspections by DSL staff are conducted without prior notice to the permittee except where necessary for on-site meetings [Rule XXIV(2)].

Section 82-4-231(2) (S.B. 515) and Permanent Program Rule XXIV(4) describe DSL procedures for public participation in the inspection process. Quoting from Rule XXIV:

Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, this subchapter, or the permit, or condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.

The monitoring of revegetation success, subsidence, erosion, and other reclamation concerns occur during the course of mine inspections. Inspectors become familiar with particular concerns for each mine through staff discussions and familiarity with the mine. Where revegetation problems are revealed DSL may require a company to prepare an investigative report pursuant to Rule IX (11). Rule IX(14) requires operators to periodically conduct measurements of vegetation, soils, and water quality on reclaimed areas when instructed to do so by DSL.

The Department of Health and Environmental Sciences will be adding a permanent program staff member to oversee company air quality monitoring pursuant to permanent program Rule XI (see Sections 5, 9 and 10).

Lastly, DSL staff and personnel contracted by the Department have monitored revegetation success at 4 of Montana's largest coal mines for the past 4 years. Production, species diversity, and other parameters are measured along a series of permanent transects in different reclamation areas.

e. Enforcement procedures

References for this section are made to P.L. 95-87 and 30 CFR Chapter VII. Cross references to the Montana Strip and Underground Mine Reclamation Act as amended (S.B. 515) and DSL's permanent program rules may be found by checking the side by side comparison in Appendix C.



1. Section 521(a) (3) and (4) of P.L. 95-87 and 30 CFR 840.13

Notices of violation and suspension or revocation orders will be prepared by DSL's legal staff and signed by the Commissioner. The legal staff will arrange and prepare all paperwork necessary for hearings and present the Department's case at all hearings. A member of the attorney general's staff will act as hearings examiner for administrative hearings. On judicial review of departmental notices and orders, the Department's legal staff, each of whom has been appointed as special assistant attorney general for representation of the Department, will represent the Department.

2. Section 521(a) (i) and Section 525 of P.L. 95-87 and 30 CFR 840.13

Each of DSL's coal mine inspectors will be given a standard cessation order form to fill in and issue should a condition or practice which requires issuance be encountered. Each mine inspector will also be authorized to issue cessation orders. The legal staff will arrange and prepare all paper work necessary for hearings and present the Department's case at all hearings. A member of the attorney general's staff will act as hearings examiner for administrative hearings. On judicial review of cessation orders, the Department's legal staff, each of whom has been appointed special assistant attorney general for representation of the Department, will represent the Department.

3. Section 521(c) of P.L. 95-87

DSL's legal staff will file and conduct any lawsuits instituted pursuant to the state statute corresponding to this subsection (see 82-4-254(3), S.B. 515).

4. Section 521(e) (f) (g) and (i) of P.L. 95-87.

The filing of criminal actions is the responsibility of the various county attorneys throughout the state. Whenever the Department's legal staff is of the opinion that criminal action is appropriate, a member of the legal staff will request the appropriate county attorney to file charges. He will assist the county attorney in investigation and prosecution as requested. If the county attorney improperly refuses to file charges, the Department's legal staff will seek intervention by the attorney general, who has supervisory authority over county attorneys. All criminal appeals are handled by the attorney general's office. DSL's legal staff will assist the attorney general's staff if requested.

f. Administration and enforcement of permanent program performance standards

There is no specific portion of the Montana Strip and Underground Mine Reclamation Act as amended by S.B. 515 or the Department's permanent program rules that in one place describes how DSL will administer and enforce the permanent program performance



standards. Several sections of this submittal however partially describe how DSL will administer and enforce such standards:

(1) Appendix C of the submittal contains a section by section comparison of Montana's coal reclamation law and rules (as amended), with P.L. 95-87 and 30 CFR Chapter VII. See, in particular, the side by side comparison for 30 CFR Subchapter k. Montana's amended coal law and rules provide the legal backbone for enforcing the permanent program performance standards.

(2) Section 7(a) of this submittal describes how DSL will receive, review and make decisions on coal permit and coal prospecting applications. Review of performance standards compliance begins with a company's application submittal and the subsequent review by DSL staff. DSL employs and will continue to employ a highly capable, environmentally oriented, professional staff. The education and experience of Montana's permanent program staff will have the diversity necessary to technically understand all coal mine performance standards (see, in particular, Table 1 on page 11, and Section 9 and 10 of this submittal).

(3) Section 7(d) of this submittal describes how DSL will inspect and monitor Montana's coal mines and prospecting areas under the permanent program. Field review for permit compliance is a key to enforcing the performance standards during the life of a permit. Problem situations are promptly brought to the attention of the company and where necessary, investigative reports are required by DSL.

(4) Section 7(e) of this submission describes DSL enforcement procedures with regards to noncompliance with any portion of Montana's Act or rules. DSL has not been lax with regards to issuing violations in the past, and this practice will not change under the permanent program. Sections 82-4-251(1) and (3) MCA (S.B. 515) respectively give DSL the authority to suspend a company's permit if it is found to be creating an imminent danger to the health, safety or welfare of the public or if it is found to be in repeated violation of the law.

g. Assessing and collecting civil penalties

DSL's procedure for the assessment and collection of civil penalties is contained in 82-4-254(2) MCA (S.B. 515). It should be noted that, unlike the federal system, the state must assess a penalty for every violation. The amount assessed will be determined by considering the factors set forth in 30 CFR 845.13 and the amount that has historically been assessed for similar violations. However, no point system will be used.

The Department's legal staff will prepare notification, called "notices of noncompliances" and handle all correspondence relating to the violation and will keep all files and records with regard to each violation. The legal staff will present the Department's case at all administrative hearings. The attorney general's office will provide hearings officers for all administrative hearings. The Department's attorneys have been appointed as special assistant attorney generals to represent the department and they will therefore bring action to collect civil penalties or defend the Department's assessment against a coal company.

h. Issuing public notices and holding public hearings

Montana's Act and Rules as amended contain numerous provisions for issuing public notices and holding public hearings. DSL procedures will be exactly the same as required by the Act and rules. Applicable portions of the Act are:

- 82-4-205(8) MCA (S.B. 515)
- 82-4-222(1)(k) MCA (S.B. 515)
- 82-4-231(2) MCA (S.B. 515)
- 82-4-232(6) MCA (S.B. 515)
- 82-4-239(4) MCA (S.B. 515)

Applicable portions of the permanent program rules are:

- Rule II(2)(v) - newspaper advertisement.
- Rule II(4)(o)(iv) - hearing on reclamation and operating plan, submission of information.
- Rule III(1) - newspaper advertisement at time of filing a permit application. Also, notice to government agencies.
- Rule III(1)(d)(ii)(B) - newspaper advertisement of informal conference on permit application.
- Rule III(3) - newspaper advertisement due to major permit revision (implied).
- Rule III(4) - newspaper advertisement due to a permit renewal.
- Rule III(5) - newspaper advertisement due to an application for Rule III(1) - and addition of acreage.
- Rule III(6) - newspaper advertisement due to a transfer of a permit.
- Rule III(7) - hearing on administrative review on application for a permit.
- Rule VI(3)(a)(i) - newspaper publication of blasting schedule.
- Rule VI(3)(a)(ii) - distribution of blasting schedule to local governments, utilities and residents. Also, this section provides for dissemination of information to local owner or resident on in how to request a pre-blasting survey.
- Rule VI(3)(a)(iii) - republication and redistribution of blasting schedule every 12 months.
- Rule VI(3)(c) - public notice of changes to blasting schedule.
- Rule XVI(2) - newspaper advertisement of alternate reclamation plan at time of filing a permit application.
- Rule XVIII(3)(c) - public notice of underground mining schedule to residents and owners above and adjacent to underground workings.



- Rule XIX(8) (b) - public notice of the application of a prospecting test pit.
- Rule XIX(8) (d) (ii) - right to administrative review as per Rule III(7).
- Rule XX(11) (b) - newspaper advertisement of filing for bond release.
- Rule XX(11) (c) - request for hearing on proposed bond release.
- Rule XX(11) (3) (i) - newspaper advertisement of informal conference on written objectives to bond release.
- Rule XX(11) (g) - request for hearing on department's decision on bond release.
- Rule XX(11) (h) - public hearing and newspaper advertisement on decision to release bond.
- Rule XXII(4) (c) (ii) - newspaper advertisement of a public hearing on permitted mining under limitations imposed by 82-4-227.
- Rule XXII(4) (c) (iii) - Opportunity for a public hearing (as above).
- Rule XXII(4) (d) - newspaper advertisement of and opportunity for a public hearing on intention to move a public road.
- Rule XXIII(4) (b) (ii) (B) - newspaper advertisement on determination of complete petition for designation of lands unsuitable.
- Rule XXIII(4) (c) (i) - hearing on above.
- Rule XXIII(4) (c) (iii) - newspaper advertisement of hearing on above.
- Rule XXIV(7) - informal hearing on notice of violation or cessation order.
- Rule XXIV(7) (d) - newspaper advertisement of hearing on above.
- Rule XXV(2) (a) - newspaper advertisement of suspension or revocation of permit.
- Rule XXV(3) - show cause hearing on above.



i. Coordination of permits with other agencies

DSL coordinates with the Montana Department of Health and Environmental Sciences (DHES) when reviewing and issuing coal mine permits. DHES has statutory responsibility for the protection of air and water quality in Montana and pursuant to such issues air quality construction permits and MPDES permits (see Section 5 and Appendix B). Where a permit issued by DHES cannot be issued prior to the issuance of a strip mine permit, DSL may condition issuance of the strip mine permit upon receipt of the required permit from DHES. DSL and DHES staffs routinely coordinate with each other with regards to data collection for permits, technical support, etc.

Other agency permits, such as those required from MSHA, must usually be received prior to the issuance of a strip mine permit from DSL. Prior issuance is insured by requiring a copy of such permits in the company's application for a strip mine permit (see permanent program Rule II).

Lastly, DSL and OSM will coordinate the permit review and issuance of mine permits involving Federal Coal pursuant to Montana's Cooperative Agreement with the Department of Interior. A copy of the existing Cooperative Agreement and protocol document may be found in Appendix E.

j. Consultation with agencies having jurisdiction over fish, wildlife, historic, cultural and archaeologic resources

Consultation between DSL and wildlife agencies will for the most part be on an informal basis. The department's wildlife biologist maintains close contact with the Montana Department of Fish, Wildlife and Parks and with the U.S. Fish and Wildlife Service, and if applicable, the BLM. If an endangered or threatened species is involved or a species covered by a similiar state or federal act (for example the 1940 Eagle Act), a formal sign off is required by the appropriate agency before DSL can issue a permit. While DSL's wildlife biologist consults with other agencies the ultimate decision regarding compliance with 82-4-231(3)(j) MCA (S.B. 515) and permanent program Rule X is made on the basis of the DSL biologist's professional opinion.

Montana coal program permit review for impacts to archaeological, cultural and historic values is made by DSL staff with assistance from the staff at the State Historic Preservation Office (SHPO). Such reviews are coordinated with that required by the appropriate federal agency having responsibility under 30 CFR 106. Because the SHPO must "sign off" on the federal agency recommendation, DSL normally utilizes the SHPO "sign off" on a proposal as a determination that historic, cultural, and archaeologic resources have been adequately protected.

k. Designation of lands unsuitable program [30 CFR 731.14(g)(11)]

Montana is developing a program that meets the requirements of Section 522 of P.L. 95-87 and 30 CFR 764. In May, 1979 a program development grant application totaling \$188,708 was submitted to the Denver office of the Office of Surface Mining. Montana's program development grant application was prepared solely for the purpose of developing a designation of lands unsuitable computer system within the Department of State Lands. This grant application has been amended twice after consultation with O.S.M. and the Department is currently awaiting funding.

The attached copy of Montana's program development grant application describes how the Department intends to develop and implement a designation of lands unsuitable program. Task I of the program will be contracted to the Systems Information Division of the Montana Department of Administration upon receipt of funding from OSM.

The Montana Strip and Underground Mine Reclamation Act was amended by the 1979 session of the Montana legislature to give DSL the authority to implement a designation of lands unsuitable program. (see Section 10 of S.B. 515, MCA in Appendix A). In addition, DSL has adopted rules and regulations for a designation program (see Rule XXIII of the Department's new rules in Appendix A). This rule articles provisions for terminating designations and for public participation in the designation process.

DEPARTMENT OF STATE LANDS

CAPITOL STATION, HELENA, MONTANA 59601

(406) 449-2074



THOMAS L. JUDGE, GOVERNOR

LEO BERRY, COMMISSIONER

July 26, 1979

Mr. Herb Angle
Grant Management Specialist
Office of Surface Mining
Old Post Office - Downtown
1823 Stout Street, Room 219
Denver, CO 80202

RE: Program Development Grant
Submitted Pursuant to 30 CFR 740

Dear Herb:

Enclosed are three copies of a program development grant to cover the costs of researching, developing and inputting data into a "designation of lands unsuitable" computer system. The purpose of this grant application is to implement Section 522 (a)(4)(B) of the Federal Strip Mining Act. The total grant budget is \$188,708, with the State's share being \$37,742.

Costs itemized in this application include equipment, travel expenses, contracted services, and other costs chargeable under Part 740 of the OSM regulations. This amended submittal should reflect the changes that you and Dick Juntunen discussed last week.

Please call as questions arise, and thanks for all your help and patience.

Sincerely,

Brace Hayden
Administrator
Reclamation Division

k1

Enclosures

MONTANA

Program Development Grant Application for the Development of Designation of Lands Unsuitable Program

Introduction

The Montana Department of State Lands (DSL) is developing a state program to regulate coal mining within Montana pursuant to the Federal Strip Mining Act. To obtain approval of such a state program from the Office of Surface Mining (OSM), DSL must implement a "designation of lands unsuitable for mining" process pursuant to Section 522 of the Federal Act.

The Montana Strip and Underground Mine Reclamation Act was amended by the 1979 session of the Montana Legislature to give DSL the authority to implement a "designation of lands unsuitable" program (see Section 10 of S355, attached). In addition, DSL has adopted rules and regulations for a "designation" program (see Rule XIII, attached).

The purpose of this program development grant application is to provide funding for:

- A. Planning and development of a data base and inventory system which will permit proper evaluation of the capacity of different land areas in Montana to support and permit reclamation of surface coal mining operations.
- B. Development of a computer inventory system for storage and retrieval of appropriate data in accordance with Item A above. This computer inventory system will be utilized in evaluating petitions submitted in accordance with Montana's designation of lands unsuitable for coal mining program.
- C. Initiation of the data collection for the computer inventory system, and the storage and utilization testing of these data for the evaluation of petitions.

The development of a "designation of lands unsuitable for mining" program is divided into four tasks as follows:

- Task 1 - User, Information, and Contractor Survey and Development of a Detailed Work Plan
- Task 2 - Computer Systems Evaluation
- Task 3 - Computer System Design and Purchase
- Task 4 - Data Collection and Entry

A major portion of the effort during the first 1.5 months of the "designation" program development will be the identification of the information required in the computer inventory system and the development of a detailed work outline for carrying out the collection and implementation of this evaluation system. An equally important portion of this early developmental work will be the identification of a qualified contractor or contractors to assist with the development of the desired computer system.

The forementioned tasks may overlap in terms of timing; however, Tasks 1 and 2 must be completed before Tasks 3 and 4 may begin.

TASK 1 - User, Information, and Contractor Surveys and the Development of a Detailed Work Plan

During this initial phase of the project, a survey of user needs will be conducted and available information formats relative to coal lands will be assessed. A detailed work plan will also be prepared and potential contractor interviews will be conducted.

A. User Needs

DSL will carefully identify its needs for data retrieval in order to accurately assess petitions under the "designation of lands unsuitable program".

B. Identification of Available Data Information for Input

Many state and federal agencies have information already on file in various filing systems, and different stages of completion, that can be used in DSL's designation program. These available lists of information will be identified in order to determine formats and their availability and suitability for entry into a computer system. Suitability assessment will include a determination of a data base's ability to be modified for data storage and retrieval in a computer system. The table on the following page shows the various information files which will be surveyed for inclusion in the overall system.

C. Information File Interface Needs

After the information to be filed into the system has been assessed and identified, it will be necessary to relate the different kinds of access and cross-utilization of data which will be required in making designation decisions. This stage will be very important to the future contractor hired to design a computer system to adequately access and retrieve information needed by DSL.

D. Preparation of a Detailed Work Plan

A detailed work plan and budget will be developed. This plan will serve as the framework within which a contractor will design the "designation" computer system. Included in the work plan will be an identification of the data to be entered in the system, a discussion of how data will be collected and entered, and a time estimate as to when the system will be functional.

E. Contractor Interviews

Following the completion of the preceding steps, it will be necessary to identify a contractor who has the expertise to develop a computer system capable of meeting DSL's "designation" program needs. More than one contractor may be involved in the project from this point forward.

TABLE 1

Resource Categories and Data Sources to be Inventoried
for Montana's "Designation" Program

<u>Resource Category</u>	<u>Data Sources</u>
Reclaimability	Universities, DSL, BLM
Coal economics (Depth, thickness, quality)	DNR, DSL, BLM, Universities, Bureau of Mines, Coal Company Records
Natural hazards	DNR, DSL, Universities, Bureau of Mines
Scientific	Fish & Game, Universities
Geologic	BLM, USGS, Bureau of Mines, Universities
Paleontologic	Universities
Archaeologic	M.A.R.S., Montana Historical Society, NPS, Universities, BLM, U.S.F.S.
Historic	Montana Historical Society, BLM, U.S.F.S., NPS, H.C.R.S.
Faunal	Fish & Game, U.S.F.S., NPS, DSL
Floral	Universities, U.S.F.S., NPS, DSL
Recreational	Fish & Game, DSL
Scenic	Fish & Game, U.S.F.S., BLM, DSL

For each resource category identified above (and any additional sources as appropriate) in Task 1, data will be sought from the following sources:

- A. Maps, Mapsets and Plates
- B. Periodicals
- C. Unpublished Thesis
- D. Unpublished Technical Reports
- E. Unpublished Documents
- F. Published Documents
- G. Published Technical Reports
- H. Personal Communications
- I. Environmental Impact Statements
- J. Bibliographies
- K. On-going Agency Inventories
- L. Meetings and Workshops (where necessary)
- M. Permit Specific Data

TASK 2 - Computer Systems Evaluation

Utilizing the contractor(s) chosen to design the "designation" computer system, an in-depth evaluation of available computer programs, both locally and from existing inventory systems will be conducted. In-state computer installations, existing hardware, and terminal systems will be evaluated for compatibility with the data base which has been identified during Task 1.

Basic requirements to be sought in a computer system will be an ability to store and retrieve data as well as to relate to and aid in evaluating the following major topics:

- A. Reclamation of an area with regards to technological and economic feasibility.
- B. Compatibility of certain areas for mining in relation to existing state or local land use plans.
- C. The effect of potential coal mining on fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.
- D. The effect of potential coal mining operations on renewable resource lands in which such operations could result in substantial loss or reduction of long-range productivity of water supply, of food and fiber products, and of aquifer systems.
- E. The effect of potential coal mining operations on natural hazard lands in which such operations could result in substantial danger to life and property, including areas subject to frequent flooding and areas of unstable geology.
- F. Basic coal resource information, including potential future demand and economic significance of the resource.
- G. The computer system will be designed to allow for continued updating of the information stored within it. The extensions of variables included in the replacement of specific data will be allowed. Each petition received will result in new data being added to the system on an additional land parcel or parcels.

At this time the basic steps and procedures will be outlined for the inter-computer file and retrieval system. A procedure integrating the petition process will also be outlined.

TASK 3 - Computer System Design and Purchase

During the third phase of the study, computer software and the necessary hardware will be chosen to meet the needs defined in Tasks 1 and 2. This phase may involve equipment purchases in order to provide ready on-line access to a computer.

In choosing a computer system, the following will be considered:

- A. The availability of the computer system to the user (both DSL and the Montana public). The timely turn-around of information needed will be given special consideration.
- B. Use of computer system. An effort will be made to orient the computer system towards the user rather than towards the computer programmer. The user should be able to submit a command with a minimal amount of computer control statements. The computer system should be usable by persons unfamiliar with computers or with the internal workings of the computer information system chosen.
- C. Cost of data storage and retrieval. This will in part determine the computer site selected for the implementation of the system.
- D. Choice of computer language. Transferability of the computer system constructed from one computer to another will be considered in the choice of a computer language to be utilized in the development of the software and the information storage system.
- E. Ease in integrating other system components at a later date. In addition to the resource categories mentioned in Table 1, the feasibility of developing a basic management system to provide integration of permit information and permitting procedures will be investigated. This may become a future sub-system of the "designation" data storage and retrieval system.

Following the above, the identification of appropriate remote terminal hardware and graphics equipment will be made. Various configurations and the use of these hardware configurations will be investigated in order to insure that their use is necessary and that the equipment purchased has the proper capabilities. Further specifics of the computer system design will be itemized during the preparation of the detailed work plan as listed in Task 1, D.

TASK 4 - Data Collection and Entry

This phase involves the actual data collection and subsequent entry into the computer information system. User needs and existing data identification in Table 1 will be utilized to complete this phase of the project.

It is not intended that the data collection and entry tasks be completed during the period of the program development grant (one year). Instead, it will be an on-going part of Montana's "designation of lands unsuitable program". Additional monies to continue this program will be applied for under a permanent program grant.

Data collected and entered will be on a priority basis with that information most readily available and most useful in determining unsuitable lands being the first to be implemented into the system. As information is collected and entered into the system, the coding and retrieval will be tested. In this manner, it is expected that the entire system will be operational as the data is collected.

Funding Needed for Program Development

DSL is initially applying for \$150,966 in program development monies to develop a "designation" program. These monies would be utilized to accomplish the four tasks outlined on the preceding pages. A budgetary outline is included on the following page, showing the state's 20 percent share for a total grant budget of \$188,708.

A. DSL Staffing

DSL anticipates hiring one project coordinator to work on the designation program. We are seeking an experienced project coordinator to work under direct supervision of the Assistant Administrator of the Reclamation Division. The project coordinator will act as the direct point of contact for all consultants hired for the various program tasks and will be expected to work with and facilitate the duties of the consultants. The project coordinator's first major effort will be to complete Task 1.

B. Contracted Services

The Department anticipates spending \$123,534 (73.5 man-months) for contracted services during the one-year period of this program development grant. It is anticipated that different consultants will be hired during different phases of the project. During Task 1, for example, consultants would be utilized to conduct the literature reviews needed to identify existing data sources available for input, while during Tasks 2 and 3, consultants would be used to help evaluate potential computer systems and to design a system suitable to the department's needs. The greatest number of man-months of contracted services would be expended during Task 4, with the collection of data and the entry of such data into the computer system. A rough breakdown of the contractual services needs of the four tasks are as follows:

Task 1 - 3.0 man-months - Project Coordinator + Systems Planner, 1.5 months

Task 2 - 15.0 man-months - Project Coordinator + 2 Systems Analysts, 5 months

Task 3 - 4.0 man-months - Project Coordinator + Programmer, 2 months

Task 4 - 51.5 man-months - Project Coordinator, 3.5 months + 6 Field Researchers, 6 months

C. Travel

Travel expenses of \$18,000 are anticipated to cover the costs of literature research and consultation with university and other agency personnel, consultation with contractors located out of the Helena, Montana area, and for attendance at OSM and other meetings regarding the "designation of lands unsuitable program". The major portion of this budget item will be for data compilation under Task 4.



D. Equipment

Equipment costs include \$29,000 for computer hardware. This estimate is considered to be at the high end of the possible range and would include the following items at a minimum:

Techtronics Graphics Display Terminal Mode,
Telephone line, Hard Copy Unit Data Entry
Equipment (Graphics Tablet and temporary
storage device)

Other Costs

Other costs include computer time, computer room rental, phone, xerox, and postage. The \$4,000 allocated for computer time is a "best estimate" of the computer time required to develop Montana's "designation program" during the first year.

In addition, DSL wishes to rent a Mag Card II typewriter or D.E.C. word processor (WD/78) for the designation program because it feels that use of such equipment would reduce the need to hire another secretary specifically for the "designation program".

Budget - Program Development
Montana Designation of Lands Unsuitable Program

Contracted Services

Task (1-4) Program Coordinator, 12 man-months (Grade 16)	\$21,339
Task (2) Systems Planner, 1.5 man-months (Grade 16)	2,667
Task (2 & 3) Systems Analyst, 10 man-months (Grade 16)	17,780
Task (4) Programmer, 2 man-months (Grade 16)	3,556
Task (4) Field Researcher, 48 man-months (Grade 15)	78,192
	<hr/>
	subtotal \$123,534

Travel

Program Coordinator (state agencies, Region V, other states)	\$ 3,000
Systems Planner (state agencies, other states)	500
Systems Analyst (state agencies, other states)	2,500
Field Researchers (state information sources)	12,000
	<hr/>
	subtotal \$ 18,000

Supplies

Desks, chairs, files and miscellaneous office equipment	\$ 2,474
---	----------

Equipment

Terminal with printer	\$ 17,000
Map Digitizer	11,000
Modem	1,000
	<hr/>
	subtotal \$ 29,000

Other

Computer time, (8 months) @ \$500/month	\$ 4,000
Computer equipment room rental, (8 months) @ \$150/month	1,200
Phone (computer time and personnel)	1,600
Mag Card or Word Processor, (1 year rental and misc. equip.)	8,200
Postage	350
Xerox charges	350
	<hr/>
	subtotal \$ 15,700

GRAND TOTAL \$188,708

State Share \$37,742
Federal Share \$150,966

1. Restrictions against financial interests

Permanent program Rule XXVIII (Appendix A) describes DSL's procedures for monitoring, reviewing and enforcing restrictions against direct and indirect financial interests of state employees in surface coal mining and reclamation operations. All interim program employees are required to fill out the "Statement of employment and Financial Interest Form" (OSM Form 705-1) pursuant to 30 CFR 705.4(a)(7) and this procedure will continue during the permanent program.

m. Training and certification of blasters

Permanent program Rule VI(1)(a) states:

Each person who conducts strip or underground mining operations shall comply with all applicable state and federal laws in the use of explosives.

Within 6 months after the Federal regulations for the training and certification of blasters have been promulgated, DSL will require that all coal companies be in compliance with 30 CFR Part 850.12 (general program requirements). Blasters will have to attend a training program that meets the requirements of 30 CFR 850.13. Lastly, DSL will require, as a permit condition, that the company present evidence that their blasters have met the certification requirements of 30 CFR 850.14. Six months after adoption of 30 CFR 850, DSL will periodically check with each coal company to ensure that blaster certifications are valid at all times while conducting blasting operations. This check would be made during normal inspections when blasting logs, seismic records and other pertinent information are looked over by the reclamation blasting inspector.

n. Providing for public participation in the state program

The drafting of changes in the Montana Strip and Underground Mine Reclamation Act began in late October 1978 and lasted until mid-January 1979. Changes in Montana's Act were necessary in order to meet the permanent program requirements of P.L. 95-87. Four bill drafts were prepared during the October-January period and DSL met with the Montana Coal Council, OSM, and the Northern Plains Resources Council in preparing the 2nd, 3rd, and 4th drafts. Once the bill (S.B. 515) was introduced into the legislature, at least 4 committee hearings were held. During the time of bill drafting and committee hearings, several articles describing the purpose for changing Montana's Act appeared in major newspapers throughout the state.

The Montana Administrative Procedures Act requires that prior to the adoption, amendment or repeal of any rule that the agency:

- 1) give written notice of its intended action;
- 2) afford interested persons 14 days to submit comments on proposed rules;
- 3) consider all comments received and to prepare a preamble to proposed final rules explaining why or why not a rule was changed pursuant to a public comment.

Pursuant to such requirements the following chronology was followed in developing Montana's permanent program rules:

- 1) Drafting - Because of OSM's lateness in issuing rules, proposed rules were drafted with negligible public participation.
- 2) Hearing Process - May 25, 1979 - Notice of proposed rules in MAR. Over 100 copies distributed to various persons, group and companies;

June 18, 1979 - Public hearing held. Comments received from 3 groups, individuals, or companies.

June 22, 1979 - Comment period closes. DSL received comments from 18 groups or individuals.

- 3) Adoption - Rules were adopted by the State Board of Land Commissioners on July 19, 1979.

Copies of Montanas proposed state program will be available for public reading after August 3, 1979 at DSL's offices in Helena and Billings. In addition, copies of this submittal are being sent to the Montana Coal Council and the Northern Plains Resource Council.

Permanent program revisions would be made by following similar procedures as described for program adoption. State program amendment procedures are described in 30 CFR 732.17. Major revisions of permits or permit amendments (see section 7a) are subject to the same public notice, filing, comment, objection and hearing provisions as original permit [see permanent program Rule III(3)].

There are two sections in the Montana Strip and Underground Mine Reclamation Act that describe citizen participation in the enforcement of Act and rules.

1. Section 82-4-252 MCA provides for mandamus. In accordance with this section a resident of Monana who knows that a requirement of the Montana Strip and Underground Mine Reclamation Act is not being enforced by a public officer or employees whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statement or changes in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident can bring an action of mandamus in a Montana district court. The court, if it finds that a requirement of the Act or rules is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to civil penalties.

2. Section 82-4-231(2) (S.B. 515) and Permanent Program Rule XXIV(4) describe DSL procedures for public participation in the inspection process. Quoting from Rule XVIV:

Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, this subchapter, or the permit, or condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.



o. Administrative and judicial review of Department of State Lands actions

The section by section comparison in Appendix C of P.L. 95-87 and 30 CFR Chapter VII to Montana's coal reclamation Act and rules as amended gives comparable hearing and judicial review requirements. Administrative review will take place in accordance with the Montana Administrative Procedure Act provisions for contested cases (see ARM Title 2, Chapter 4, Part 6 in Appendix B). DSL's legal staff will be responsible for presenting the Department's case at administrative hearings. The attorney general's office will provide hearings examiners.

Judicial review is provided for in ARM Title 2, Chapter 4, Part 7 (see Appendix B). If such provisions are not applicable, Departmental actions are reviewed by means of injunction (see Chapter 19, Title 27, MCA in Appendix B) and other common law remedies. The Department's legal staff has been appointed as assistant attorney generals to represent the Department in court and will do so as a part of Montana's permanent legal program.



p. Small operator assistance program

The Department of State Lands (DSL) will administer the Small Operator Assistance Program (SOAP) in Montana (30 CFR 795). The attached letter to Don Crane and enclosures constitute DSL's application to administer SOAP and provides information regarding how this Departmental program will initially operate.

Section 82-4-22 MCA (S.B. 515) and permanent program Rule XXVI give the legal authority for Montana's SOAP program.



DEPARTMENT OF STATE LANDS



CAPITOL STATION HELENA, MT 59601

THOMAS L. JUDGE, GOVERNOR

(406) 449 2074

LEO BERRY, COMMISSIONER

August 3, 1979

Mr. Donald Crane
Regional Director
Office of Surface Mining
Dept. of the Interior
Old Post Office--downtown
1823 Stout Street, Room 270
Denver, Colorado 80202

RE: Small Operator Assistance Program

Dear Don;

The following narrative and enclosures constitute Montana's application to administer the Small Operator Assistance Program (SOAP) in this state. SOAP would be administered in Montana by the Department of State Lands (DSL), the designated state regulatory authority.

DSL's intent to administer SOAP and to receive federal funding for that purpose is exhibited in the two enclosed letters which date back to March, 1978. Section 82-4-22 of the Montana Strip and Underground Mine Reclamation Act as revised by the 1979 Legislature (S.B. 515) and DSL's permanent program Rule XXVI adopted pursuant to the revised Montana Act give the legal authority and ability for DSL to comply with 30 CFR 795 in administering SOAP.

The following constitutes a response to the questions and informational requests in your letter of May 10, 1979:

(1) Montana is requesting \$65,325 in SOAP funding for the initial year of the program. An outlined breakdown of the first year's costs are included on the following 3 pages. Laboratory contract costs constitute \$57,325 of the total.

(2) SOAP activity and coal permit approval activity will be coordinated within DSL by having the personnel involved in permit application review being the same personnel involved in administering SOAP. If in the future it becomes necessary to employ persons with responsibility primarily to SOAP, those persons will coordinate with others whose responsibilities lie primarily with permit review to ensure that contracts entered into under SOAP will meet the information requirements necessary for a permit application.

Initial Year Costs -- Montana Small Operator Assistance Program

I. Lab Costs

Mine	Surface Water	Ground Water	Sedimentation Ponds	Coal Analysis	Overburden Analysis
P.M.	--	\$1,236	\$160	--	--
Divide	--	1,236	160	--	--
Coal Creek (existing)	\$1,000	1,236	80	--	--
Coal Creek (expansion)	--	824	80	--	\$1,300
Hathaway	--	824	80	--	--
Warburton (existing)	--	824	80	--	--
Warburton (expansion)	--	824	80	\$ 50	375
Bridger	--	1,236	--	\$150	325

Initial Year Costs -- Montana Small Operator Assistance Program

II. Writing of Reports, Equipment & Materials

Mine	Professional Writing	Typing	Drafting of Maps	Crest Gages	Rain Gages	Binding & Copying of Reports
P.M.	\$800	\$120	\$120	\$60	\$150	\$100
Divide	800	120	120	60	150	100
Coal Creek	800	120	120	30	150	100
Hathaway	600	60	120	30	150	100
Warburton	800	120	120	30	150	100
Bridger	800	120	120	--	150	100

Initial Year Costs -- Montana Small Operator Assistance Program

III. Field Costs

Mines	Drilling, Casing and Development of Wells	Ground Water - Surface Water Monitoring & Sampling & Sedimentation Pond Sampling (includes labor, travel and per diem)	Electric and Lithologic Logging of Holes
P.M.	\$2,490	\$2,430	\$1,050
Divide	2,490	2,430	1,050
Coal Creek (existing)	1,410	} 4,740	825
Coal Creek (expansion)	1,300		550
Hathaway	1,030	3,570	550
Warburton (existing)	--	} 2,940	--
Warburton (expansion)	940		550
Bridger	3,300	2,780	1,050

IV. Total Costs

Contracted Services	\$57,325.00
Program Administration	8,000.00
(1 employee ½ time)	\$65,325
	Grand Total

(3) DSL's list of qualified laboratories will be developed using the procedures in permanent program Rule XXVI(6). The department may also use OSM's laboratory list for names of laboratories that have not applied to DSL for approval. Lab performance, in terms of actual chemical and physical analyses of water and overburden, will be evaluated by periodically requesting split samples for analysis by the same or other lab; and also by periodically providing standard samples to a lab for analysis. These activities may be coordinated with other agencies who are also involved with laboratory certification such as the EPA or the Montana Water Quality Bureau.

(4) DSL will contract with a laboratory by first soliciting proposals (including a bid) from prospective candidates. A contract would be issued after careful evaluation of all proposals.

(5) Information concerning a proposed mine's "general area", (see DSL permanent program Rule 1, paragraph 24), will be made available by the development of a departmental bibliography of references. These references will be keyed to various geographic areas of interest.

(6) DSL does not at this time see a need for small operator assistance application forms. The information required in order to apply for assistance [see permanent program Rule XXVI(3)] could be submitted in any reasonable format.

DSL does not see the need to routinely verify an operator's legal right to mine a proposed area. If there is some reason to believe an operator might be mining illegally, the alleged owner of the surface or coal would be contacted if different from the operator. If the operator owned the coal or surface, then the clerk and recorder of the county in which the operation were located, or would be located, could be contacted to verify the ownership pattern, should a question arise.

The actual production of a mine can be verified by contacting the Montana Department of Revenue which requires quarterly production reports from each mine.

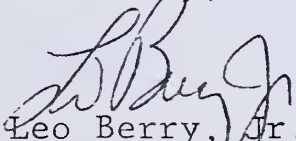
(7) DSL anticipates that 6 small operators may apply during the first year of a SOAP program in Montana. Five of these would be existing operators who need to upgrade their permits in order to comply with Montana's Act and Rules as revised pursuant to P.L. 95-87 and 30 CFR Chapter VII. DSL also anticipates proposed expansion by two of these operators. The sixth operator would be completely new and for which an application is anticipated.

Mr. Donald Crane
Small Operator Assistance Program
August 3, 1979
Page -2-

(8) The only other agency which we anticipate may contract with DSL pursuant to SOAP would be the Water Quality Bureau of the Montana Department of Health and Environmental Sciences. The Water Quality Bureau has laboratory facilities capable of conducting water quality analysis.

Questions regarding Montana's proposed SOAP program should be addressed to either Brace Hayden or Neil Harrington of this Department.

Sincerely,


Leo Berry, Jr., Commissioner
Department of State Lands

BH:lw

xc: Neil Harrington

June 13, 1979

Mr. Don Crane
Regional Director
Department of the Interior
Office of Surface Mining
Old Post Office--downtown, Rm. 270
1823 Stout Street
Denver, CO 80202

Re: (Small Operator Assistant Program)

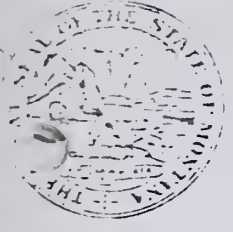
Dear Don;

This letter constitutes an initial response to your letter of May 10, 1979 regarding our grant application for administration of the Small Operator Assistance Program in Montana. The Department of State Lands definitely intends to administer this program. However, our grant application to you has been delayed somewhat due to uncertainties regarding some of the information requests on page 2 of your May 10 letter. A discussion between Ms. Maggie Koperski and Mr. Neil Harrington of this office indicated that additional information on various aspects of the application format and content would be forthcoming from OSM in a week or two. Thus, we have decided to wait on our grant application submittal until such time as that information is received.

Sincerely,

Leo Berry, Jr., Commissioner
Department of State Lands

NH:lw



DEPARTMENT OF STATE LANDS

MAILING ADDRESS: CAPITOL STATION
OFFICE: 1625 11TH AVENUE

HELENA 59601

(406) 449-2074

STATE BOARD OF
LAND COMMISSIONERS

THOMAS L. JUDGE
GOVERNOR

GEORGIA RICE
DEPT. OF PUBLIC INSTRUCTION

FRANK MURRAY
SECRETARY OF STATE

MIKE GREELY
ATTORNEY GENERAL

E. V. "SONNY" CMHOLT
AUDITOR

March 28, 1978

Mr. Walter Heine, Director
Office of Surface Mining
Department of the Interior
Room 7348
18 & C Streets NW
Washington, D.C. 20204

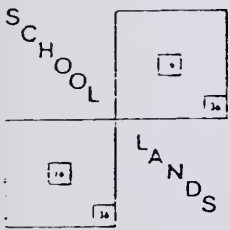
Re: Initiation of a Small
Operator Assistance
program in Montana

Dear Mr. Heine,

Pursuant to 30 CFR Part 795, Montana elects to receive funding and commence the administration of a Small Operator Assistance program in Montana. This program would be administered by the Montana Department of State Lands, the state agency responsible for the regulation of coal mining in Montana.

By August 3, 1978, the Department of State Lands intends to submit Montana's state reclamation program to the Secretary of Interior in accordance with the requirements outlined in Section 503 of P.L. 95-87. A summary description of actions taken to date to develop a state regulatory program in Montana are as follows:

1. The Department of State Lands has completed an initial review and comparison of the Montana and the Federal Coal Mine Reclamation Acts. With possibly a few exceptions the Department feels that the Montana Act already meets the minimum requirements in the Federal Act.
2. The Department has drafted and promulgated emergency rules that incorporated those portions of 30 CFR Parts 715, 716, and 717 not already specifically required in the Department's existing rules adopted pursuant to Montana's Act. These emergency rules represent a synthesis of the Department of State Lands' existing rules and O.S.M.'s initial regulatory period rules. Furthermore, such emergency rules probably represent a significant portion of the total work effort needed



MINING



RECLAMATION



to get Montana's program ready for submittal. Massive changes between the initial regulatory period rules for performance standards and O.S.M.'s final rules for performance standards are not anticipated (copy enclosed).

3. The Department of State Lands has submitted a grant application to O.S.M. for cost reimbursement for administering the initial regulatory program. If the requested grant monies are received it will allow the Department to add additional administrative and technical personnel to its staff and to increase the funding level for travel, equipment, and existing staff services. It is felt that a well funded program for the administration and enforcement of the initial regulatory program will assist the Department's program development effort.
4. Through meetings and phone conversation, the Department of State Lands has established a working relationship with members of O.S.M.'s regional and Washington staffs. The Department has met and will continue to meet officials regarding a modification of Montana's cooperative agreement to comply with the initial regulatory procedures as set forth in Section 502 of P.L. 95-87. The Department has also met with the representatives of the U.S. Geological Survey and the Bureau of Land Management in an attempt to work out methods to avoid duplication of the permit review process.

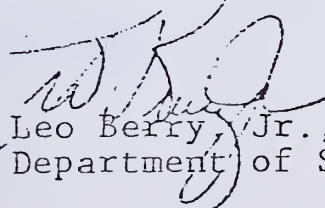
As stated earlier, Montana intends to submit its state program to O.S.M. by August 3, 1978. Such a program will be as complete as is possible at that time. The program will contain the requirements set forth in Section 503 of P.L. 95-87 including any proposed statutory changes needed to bring Montana's Act into compliance with the Federal Act. Such legislation will be submitted for consideration to Montana's state legislature when it convenes in January of 1979. In preparing Montana's program, the Department of State Lands will utilize the most current set of O.S.M.'s draft, proposed or final rules implementing P.L. 95-87.

A summary schedule of actions to be taken to develop Montana's state regulatory program for approval are as follows:

1. By May 20, the Department of State Lands intends to publish a proposed set of new rules for the Montana Strip and Underground Mine Reclamation Act. These rules will implement P.L. 95-87 to the extent possible without changing Montana's Act. These revised rules will represent a modified and expanded version of the emergency rules adopted by the State Board of Land Commissioners on March 20, 1978. Hearings on the new rules will be held in June 1978, and the rules will be adopted by July 20, 1978.

2. Between March 24 and May 17, the Department will be preparing an outline of any legislative, staffing, and rules changes necessary to establish a process for the designation of lands unsuitable for coal mining. In establishing such a process, the Department will work closely with the Missouri River Basin's Western Coal Planning Assistance Project, with Joe O'Connor of the U.S.G.S.'s R.A.L.I. program and with the O.S.M. staff. The Department of State Lands will participate in the Suitability/Unsuitability designation workshop sponsored by R.A.L.I. and O.S.M. from May 17-20, 1978. The Department hopes to present its proposed "designation" program at this workshop.
3. Prior to May 31, 1978, the Department will submit to O.S.M. a grant application for program development. Costs to be included in this grant application will include the additional staffing, equipment, and travel costs required to comply with Section 503 of P.L. 95-87. Because Montana elects to administer the Small Miner Assistance Program, it will include funding for such a program in its program development grant.
4. During June and July of 1978, the Department will be drafting any necessary statutory changes required to bring Montana's Act up to the standards of P.L. 95-87. The Department anticipates a response from O.S.M. as to the adequacy of such changes prior to the convening of Montana's legislature in January 1979.

Please call or write if additional information is required to initiate a Small Miner Assistance Program in Montana.

Sincerely,

Leo Berry, Jr., Commissioner
Department of State Lands

BH/lw

xc: Brace Hayden
John North
Dick Juntunen
Bob Yuhnke

enclosure

8. Statistical information on Montana coal mining and prospecting operations [30 CFR 731.14(h)]

a. Coal tonnage

Annual coal tonnage produced in Montana for each of the past three years is as follows:

1976 - 26,180,671 tons
1977 - 27,393,436 tons
1978 - 26,679,174 tons

The source of this data is the Workmens Compensation Division of the Montana Department of Labor and Industry (Capitol Station, Helena, MT 59601). Each operating coal mine in Montana is required to report their tonnage figures on a monthly basis to the Workmens Compensation Division.

b. Number of mines and mine locations

Since the Montana Strip and Underground Mine Reclamation Act was passed in 1973, (Title 82, Chapter 4, Part 2, M.C.A.) 11 coal mines have been permitted by the Department of State Lands. These mines are listed in Table 2 and are located on Figure 4. All of Montana's existing coal mines are producing or will produce subbituminous coal with the exception of Knife River Coal Co.'s Savage Mine, which produces lignite. The only underground coal mine permitted in Montana is Beartooth Coal Co.'s mine in Carbon County. To date, (June 30, 1979) no coal has yet been produced from the Beartooth operation.

c. Acreage for mine permits and prospecting permits

The total area permitted for strip or underground coal mining operations in Montana as of June 30, 1979 is 20,393 acres. A company by company breakdown for the past 3 years is as follows:

June 30, 1976 - December 31, 1976

<u>Company</u>	<u>Acres permitted</u>
Decker	2,810
Western Energy	4,495
Westmoreland	1,317
Peabody	1,234
Knife River	477
Divide	8
P.M.	12
TOTAL	10,353

January 1, 1977 - December 31, 1977

<u>Company</u>	<u>Acres permitted</u>
Decker	7,427
Western Energy	5,628
Westmoreland	1,320
Peabody	1,234
Knife River	565
Divide	8
P.M.	<u>14</u>
TOTAL	16,196

January 1, 1978 - December 31, 1978

<u>Company</u>	<u>Acres permitted</u>
Decker	7,514
Western Energy	5,666
Westmoreland	2,157
Peabody	1,234
Knife River	565
Divide	43
P.M.	14
Coal Creek	21
Beartooth	<u>98</u>
TOTAL	17,312

January 1, 1979 - June 30, 1979

<u>Company</u>	<u>Acres permitted</u>
Decker	7,515
Western Energy	5,666
Westmoreland	2,157
Peabody	1,280
Knife River	565
Divide	43
P.M.	100
Coal Creek	21
Beartooth	98
Warburton	10
Spring Creek	<u>2,938</u>
TOTAL	20,393

Table 2 - Montana Coal Mines, Existing & Proposed (August 3, 1979)

I. Existing Mines

<u>Name</u>	<u>County</u>	<u>1978 prod.</u>	<u>Type of Mine</u>	<u>Coal Class</u>
Decker - West Pit	Bighorn	6,855,423	Surface	Subbituminous
Decker - East Pit	Bighorn	2,312,215	Surface	Subbituminous
Western Energy Co.	Rosebud	10,565,750	Surface	Subbituminous
Westmoreland	Bighorn	4,549,558	Surface	Subbituminous
Peabody	Rosebud	2,080,414	Surface	Subbituminous
Knife River	Richland	288,708	Surface	Lignite
Divide	Musselshell	8,984	Surface	Subbituminous
P.M.	Musselshell	9,877	Surface	Subbituminous
Coal Creek	Powder River	8,245	Surface	Subbituminous
Spring Creek	Bighorn	--	Surface	Subbituminous
Warburton	Blaine	--	Surface	Subbituminous
Beartooth	Carbon	--	Under-ground	Subbituminous

II. Proposed New Mines

<u>Name</u>	<u>County</u>	<u>Permit Application Date</u>	<u>Type of Mine</u>	<u>Coal Class</u>
Shell Oil Co.	Bighorn	August, 1977	Surface	Subbituminous
Consolidation Coal Co.	Bighorn	anticipated in 1980	Surface	Subbituminous
Western Energy Co.	Custer	anticipated in 1980	Surface	Subbituminous
Hathaway Coal Co.	Custer	11/21/78	Surface	Subbituminous
Dreyer Brothers (Burlington Northern)	McCone	anticipated in 1980	Surface	Lignite
Montco		August 1980		
Squirrel Creek				

d. Geographic distribution of Montana coal mining and prospecting areas

Figure 4 on the next page shows the geographic distribution, by county, of existing underground and surface mining activities, for the period immediately preceding submission of Montana's proposed permanent program.

The approximate total area approved and permitted for coal prospecting in Montana for the past 4 years is as follows:

1976	45 permits	691.2 acres
1977	47 permits	983.1 acres
1978	44 permits	1392.1 acres
1979 (thru 6/30)	44 permits	1251.3 acres

The number of acres disturbed by prospecting holes was determined by dividing the number of drill holes permitted by 10, as one drill hole equals approximate .10 acres.

Coal exploration permits expire at the end of one year from the date of issuance unless renewed by the company. Bonds, however, are retained on each hole drilled until such time that it is determined that all reclamation requirements have been met.

e. Number of permits issued during the last three years

The number of strip coal mining permits and permit renewals issued by the Department of State Lands (DSL) pursuant to the Montana Strip and Underground Mine Reclamation Act for each of the past three years is as follows:

1976	10 permits	8 renewals
1977	10 permits	10 renewals
1978	12 permits	2 renewals

The department has not in the past issued permit revisions as it had no statutory authorization for doing so. All applications for increase or decrease in the size of a permit area were handled as new permits (see 82-4-225, M.C.A. in Appendix A). The Montana Strip and Underground Mine Reclamation Act was revised by the 1979 legislature to allow for permit revisions consistent with the Federal Act (see Section 5 of S.B. 515 in Appendix A).

Beginning in 1977, all coal permits and renewals were issued for a 5-year period. Also a consolidation of permits for each mine occurred during 1977-1978.

The number of coal prospecting permits, revisions, and renewals issued by DSL pursuant to the Montana Strip and Underground Mine Reclamation Act for each of the past three years is as follows:

1976	17 permits	31 amendments	34 renewals
1977	14 permits	36 amendments	37 renewals
1978	13 permits	29 amendments	35 renewals

A coal prospecting permit amendment is issued when a company adds holes or changes hole locations to an existing permit.

f. Frequency of DSL mine inspections during the interim program

The number of mine inspections conducted at each mine permitted under the Montana Strip and Underground Mine Reclamation Act between May 7, 1978 and June 30, 1979 are as follows:

Decker (West Pit) - 19	Divide - 9
Decker (East Pit) - 17	P.M. - 8
Knife River - 7	Coal Creek - 9
Western Energy - 17	Beartooth - 6
Peabody - 19	Warburton - 1
Westmoreland - 18	Spring Creek - 1

g. Status of reclamation on surface coal mines and coal prospecting operations

As of June 30, 1979, there were 38 permits (20,393 acres), for coal mining activities in Montana (see 82-4-221, M.C.A.). These permits were issued for 11 separate mines. Bond has been released on none of the permits and therefore no coal mine acreage has been totally reclaimed in accordance with the Montana Strip and Underground Mine Reclamation Act (see 82-4-232 through 234, M.C.A.). Each coal company is required to submit a planting report at least 60 days prior to permit expiration (see 82-4-235). According to the latest planting reports received by the Department, 2,292 acres have been regraded, retopsoiled, and reseeded since the Act's passage in 1973. Regrading has begun at all surface mines with the exception of those permitted in the past year (Warburton and Spring Creek).

As of June 30, 1979, there were 44 active coal prospecting operations in Montana. The number of coal prospecting permits being actively reclaimed as of June 30, 1979 is 48. This later figure was calculated as the sum of active prospecting permits plus those permits which have expired during the last two years.

Reclamation is virtually complete on 90 of the coal prospecting permits issued since this passage of the Montana Strip and Underground Mine Reclamation Act in 1973. This sum represents the number of permits that have expired in the past 2-6 years. Total bond has been released on no coal exploration permits to date, although on some only a very small amount is still being held by DSL.

h. Proposed future coal production and future production areas

Projected demand for Montana coal for the next 20 years is shown in Table 3. It is assumed that demand projections will be met by expansions of existing mines and by the opening of new mines. All but a very small fraction of Montana's production in the next 20 years will come from surface coal mines and all but a very small amount will be consumed by electric utilities. More than 98% of Montana's coal production in 1978 was subbituminous (see Table 2) and it is anticipated that at least 90% of Montana's coal production in the year 2000 will also be subbituminous. A listing of existing and proposed coal mines in Montana is given in Table 2).

Projected geographic distribution of coal prospecting and surface coal mining and reclamation operations in Montana for the next 3-5 years are shown on Figure 4.

Table 3 Projected demand for Montana coal--1980-2000^{1/}

Year	Out-of-State Demand		Montana Demand
		million tons/yr.	million tons/yr.
1980		27.3	3
1985	low	28.3	4-10
	med.	35.3	
	high	45.8	
1990	low	40.0	4-10
	med.	48.5	
	high	62.5	
2000	low	55.0	?
	med.	68.0	
	high	88.0	

^{1/}Source: "Electric utility coal demand scenarios for the Montana Energy Model: by Terry Wheeling for the Montana Energy Research and Development, Inc. May 1978.



9. Existing and proposed program staffing levels

At present, 15 members of DSL's Reclamation Division (14 FTEs) and 3 members of the Centralized Services Division spend at least part of their time involved with Montana's coal reclamation program. This total does not include the employee responsible for administering Montana's Abandoned Mine Land program. In addition, the Commissioner of State Lands and 2 members of his staff have partial coal program duties. Table 1 (in Section 5) lists departmental positions involved with DSL's coal and Abandoned Mine Land programs and the function and minimum qualifications for each position. Four positions (3 FTE's) in the Reclamation Division are currently funded by OSM under Interim Program grant pursuant to 30 CFR Part 725. One position is funded under a Cooperative Agreement with OSM for Abandoned Mine Land Reclamation planning.

Two more full-time individuals will be added to the Department's Reclamation Division for the administration of the permanent regulatory program. Funding for these positions will be sought from OSM under a program administration grant pursuant to 30 CFR 740. The positions will include a blasting specialist and either a wildlife biologist or a plant ecologist depending upon the Department's need at the time.

Existing staffing levels and functions for the Department of Health and Environmental Sciences (DHES), Environmental Sciences Division are described in Section 5.

One more full-time position will be added to the Environmental Sciences Division for the administration of the permanent regulatory program. Funding for an air quality specialist will be applied for by DSL under a program administration grant pursuant to 30 CFR 740.

The air quality specialists' duties would include review of air quality control measures for fugitive dust at each of Montana's coal mines (see Rule XI of DSL's new coal rules in Appendix A) and also over-site of coal mine air quality monitoring (see new Rule II). Minimum qualifications for the position would include a bachelor's degree in an engineering field and one year experience in air quality control. For the sake of governmental efficiency, the air quality specialist would be hired by DHES and would be part of DHES's staff, however he or she would be assigned to DSL's Reclamation Division and his (or her) office would be in the DSL building.

10. Description of staffing adequacy [30 CFR 731.14(g)]

Section 5 describes the structural organization and duties of the Department of State Lands with regards to Montana's existing and proposed coal programs; Section 9 and Table 1, (page 11) describes Montana's existing and proposed staffing levels to its coal program.

Excluding members of the Commissioner's staff and the Centralized Services Division there are at present 15 DSL employees (14 FTE's) in the Reclamation Division who spend at least part of their time involved with the initial regulatory program (see Table 1).^{1/} Ten of these are part of the Department's coal and uranium bureau and as such devote full time on their coal or uranium duties. These ten staff members include:

Coal Bureau Chief (wildlife and forestry degrees)
Supervisor of the Billings office (earth sciences degree)
Permit Analyst (English degree)
Mining Engineer (civil engineering degree)
Soil Scientist
(2) Hydrogeologists
Plant and Soil Scientist
Range Scientist
Geologist

*The background for each of these positions is the same as the job title unless indicated in parenthesis.

Because Montana does not currently have active uranium mining, the coal and uranium bureau staff has three principal functions:

1. coal prospecting: permit review and inspections;
2. uranium prospecting: permit review, and inspections; and
3. coal mine permit: review and inspections.

Three coal and uranium bureau staff members in the Billings office and one in the Helena office handle prospecting duties (see Figure 1). Each of these four individuals spends approximately 35 percent of their time (annually) on coal prospecting duties, 35 percent on uranium prospecting duties and 30 percent on coal mining duties. During the summer field season, coal and uranium prospecting activities may consume 100 percent of these 4 individuals' time.

^{1/}For budgeting purposes it was calculated that 9 FTE's out of the 20 FTE's in the Reclamation Division were spent on coal program duties. Six-tenths of 1 FTE of this total includes the Administrative Officer III on the Commissioner's staff.

The coal bureau chief spends approximately 90 percent of his time on coal and 10 percent on uranium duties. The other 5 members of the coal bureau spend all of their time on coal mining duties.

The adequacy of Montana's existing coal program may be judged by the number of coal mine inspections conducted during the interim regulatory period. One hundred and thirty-one inspections were conducted by DSL between May 7, 1978 and June 30, 1979. Montana had 9 approved coal mines at the start of this period and eleven at the end (see Section 8(f) and Table 1). This frequency of inspections far exceeded that required by Section 502 of P.L. 95-87. Individual mine inspections often take a full day and often involve two or more inspectors.

Another way of judging the adequacy of Montana's existing staffing levels is the thorough manner in which permit applications are evaluated. Montana's Act allows DSL a maximum of 240 days of review after the receipt of a complete coal permit application (see 82-4-23, M.C.A. in Appendix A). An application is considered complete when a company has submitted data and text showing that all the requirements of the Act and rules have been committed to and when it has been determined that the data submitted is of sufficient quality that the permit review process can be completed without the need for more information. It is a Departmental goal to send a letter informing the company of permit deficiencies within 60 days of the receipt of the application; such letters often run to 30 pages or more.

Several meetings between company and coal bureau personnel occur during the course of a permit review. It is a common practice for our hydrologist or soil scientist to spend a day with his company counterpart to work on such technical aspects of a mining plan as drainage designs or alternative methods of highwall reduction.

In the Fall of 1978, the Department added 4 additional staff members (3 FTE's) to help with permanent program development and the additional workload generated by Montana's enforcement of the Interim Regulatory Program. These individuals included an Assistant Administrator of the Reclamation Division, a Plant and Soil Scientist in the coal bureau and 2 part-time Clerk Typists (see figure 1).

The Assistant Administrator of the Reclamation Division is responsible for development of Montana's Designation of Lands Unsuitable Program. Some of the workload under this program will initially be contracted out (see section 7k). The Assistant Administrator is also a key liaison with OSM, serves as a wild-life biologist for the Reclamation Division and handles occasional inspection duties.

The Plant and Soil Scientist is responsible for general permit review and inspections and was hired specifically to help

absorb some of the extra workload generated by the Department's enforcement of the Interim Regulatory Program.

The two Clerk Typists were hired to help handle the extra typing load generated by increased staffing levels and increased inter-governmental correspondence.

DSL intends to add 2 additional staff members to its coal and uranium bureau after permanent program approval and the Department of Health and Environmental Sciences will add one additional employee to its Air Quality Bureau (see Section 9). The new positions to be added to Montana's coal program described include a blasting specialist, an air quality specialist and either a wildlife biologist or a plant ecologist. In addition to their specific professional duties these three individuals will help ease the increased workload burden on the entire coal program staff after Montana's permanent regulatory program is approved.

The Department's duties under the small operator assistance program will be divided among 8 existing or proposed staff members in the Reclamation Division. These individuals are identified on Figure 1. A description of Montana's proposed small operator assistance program is included in Section 7(p).

When one includes the proposed new staff members, the Administrator of the Reclamation Division, and secretarial-clerical help to the 10 existing coal bureau staff members there will be 17 members of the Reclamation Division who will play at least a partial role in Montana's permanent coal program (see Table 1). Added to this list are the Commissioner of DSL and 2 members of his staff as well as 3 members of the Centralized Services Division. The permanent program responsibilities for each of these individuals are listed in Table 1.

It is not possible to adequately estimate staffing needs beyond about the first year of the permanent program. While there is no difference between interim and permanent program staffing needs with regards to enforcement of performance standards, bonding procedures, or the issuance of violations, etc., other areas such as small operator assistance and the designation of lands unsuitable may become much more time consuming than now anticipated. Montana will respond to such changes, should they occur, by adding additional staff members to its coal program through OSM permanent program grants (30 CFR 740).

Another reason why Montana's proposed permanent program staffing levels are adequate is that DSL does not expect a rapid increase in Montana coal production in the near future, (see Table 3) nor does it expect coal development to occur in substantially different parts of the state than where it is now occurring. Hence, mine inspection travel time should also grow slowly.

The education and experience requirements for the positions listed in Table 1 also reflect on the adequacy of Montana's permanent program staffing. All 10 members of the Department's existing coal and uranium bureau staff have at least a bachelors degree and 5 members have earned their masters.

Members of the coal and uranium bureau have varied educational backgrounds. Most have degrees in either a natural resource or an engineering field. Such varied backgrounds provide an interdisciplinary approach to problem solving. On the larger coal mines, each member of the bureau's Helena staff reviews a permit application according to their area of expertise and field inspections are rotated among all coal bureau members on a regular schedule. Considerable effort is expended on hiring of well qualified and hard working individuals. Minimum qualifications for employment in the coal and uranium bureau will remain just as high during the permanent program.

11. Technical and professional personnel available from other agencies
[30 CFR 731.14(1)]

The only other state personnel which DSL intends to use as a part of its administration of the permanent program are members of the Montana Department of Health and Environmental Sciences (DHES) Laboratory Division and Air Quality Bureau. DSL depends upon the Laboratory Division to analyze water quality samples collected from drainageways, sediment ponds and other areas on or adjacent to coal mines (see Section 5, page 12).

An additional air quality specialist will be added to the staff of the Air Quality Bureau for the administration of the permanent program (see sections 9 and 10). The air quality specialist's duties would include review of air quality control measures for fugitive dust at each of Montana's coal mines and also over-site of coal mine air quality monitoring.

Other professional staff members of DHES's Air Quality and Water Quality Bureau's, while not having specific coal program duties, often advise members of DSL's Coal and Uranium Bureau on technical matters. A description of the duties of these two bureaus is given in Section 5. Advice on technical matters is also sought from professional staff members of the U.S. Geological Survey, the Environmental Protection Agency and the Office of Surface Mining.

12. Budgetary summary for Montana's coal program [30 CFR 731.14(L)]

Table 4 gives a budgetary summary for Montana's coal program for the prior and current fiscal years, and the projected annual budget for each of the next 2 fiscal years. These budgets assume supplemental funding for permanent program administration under 30 CFR 740. Tables 5 and 6 give line-item cost breakdowns for Montana's coal program during FY 79 and 80. The program budget for FY 81 (Table 4) come from preliminary line-item estimates by DSL and is therefore subject to change. The program budget for FY 82 (Table 4) was estimated at FY 81 plus 10 percent. All budgetary data in this section are calculated for State of Montana fiscal year which runs from July 1 to June 30.

State funding for DSL's Reclamation Division comes from two sources: the state general fund and DSL's "Reclamation Account." The Reclamation Account is composed of permit and violation fees paid during 2 previous fiscal years. In FY 79, approximately 95 percent of Reclamation Division funding came from the general fund and approximately 5 percent came from permit fees and violations. Funding for the Commissioner and members of DSL's Centralized Services Division and Commissioner's staff involved with Montana's coal program comes from the state general fund.

Table 4 . Budgetary Summary of Montana's Coal program
for FY 1979 through FY 1982

Fiscal year ^a	Source of funds	Subtotal	Total
1979 ^b	State-----	221,028	351,028
	OSM ^c - initial regulatory program-----	<u>130,000</u>	
1980 ^d	State-----	232,701	562,133
	OSM - initial regulatory program and permanent program administration-----	178,466	
	OSM - program development-----	<u>150,966</u>	
1981 ^e	State-----	240,107	471,515
	OSM - permanent regulatory program-----	<u>231,408</u>	
1982 ^f	State-----	264,117	518,666
	OSM-----	<u>254,549</u>	

^aData are based on the State of Montana fiscal year which runs from July 1 through June 30.

^bA funding breakdown for FY 79 is given in Table 5 .

^cInitial regulatory period grants are applied for under 30 CFR 725; program development grants and program administration and enforcement grants are applied for under 30 CFR 740.

^dA funding breakdown for FY 80 is given in Table 6 .

^eState and OSM funding for FY 81 came from preliminary line-item estimates by DSL.

^fFunding for FY 82 was estimated at FY 81 levels plus 10 percent.

Table 5. Line item summaries of Montana coal program for State FY 1979^a

	Subtotal	Total
<u>State Funding</u>		
Reclamation Division (9 FTE's)		
Salary-----	137,573	
Benefits-----	19,253	
Contracted services-----	6,232	
Supplies and materials-----	2,135	
Communication and transportation---	2,622	
Travel-----	20,690	
Rent-----	675	
Repairs and maintenance-----	314	
Other expenses-----	225	
Equipment-----	135	189,804
Commissioner (.50 FTE)		
Salary-----	15,600	
Benefits-----	2,496	18,096
Chief Legal Council (.50 FTE)		
Salary-----	10,363	
Benefits-----	1,658	12,021
Centralized Services Division (.09 FTE)		
Salary-----	954	
Benefits-----	153	1,107
Total State funding-----		221,028
<u>OSM Funding (initial program grant)</u>		
Reclamation Division		
Salary-----	40,000	
Benefits-----	5,600	
Contracted services-----	5,000	
Supplies and materials-----	800	
Communication and transportation---	-0-	
Travel-----	22,000	
Rent-----	-0-	
Repairs and maintenance-----	-0-	
Other expenses-----	600	
Equipment-----	56,000	
Total OSM funding-----		130,000

^aAll coal program funding for FY 79 was for the Montana Department of State Lands.

Table 6. Line item summaries of Montana coal program FY 1980^a

	Subtotal	Total
<u>State Funding</u>		
Reclamation Division (9 FTE's)		
Salary-----	139,191	
Benefits-----	22,173	
Contracted services-----	6,607	
Supplies and materials-----	2,264	
Communication and transportation---	2,779	
Travel-----	12,373	
Rent-----	711	
Repairs and maintenance-----	333	
Other expenses-----	12,668	
Equipment-----	180	199,279
Commissioner (.50 FTE)		
Salary-----	16,756	
Benefits-----	2,681	19,437
Chief Legal Council (.50 FTE)		
Salary-----	11,035	
Benefits-----	1,766	12,801
Centralized Services Division (.09 FTE)		
Salary-----	1,021	
Benefits-----	164	1,185
Total State funding-----		232,701
<u>OSM Funding (initial regulatory program and permit program administration)</u>		
Reclamation Division		
Salary-----	0	
Benefits-----	0	
Contracted services-----	98,827	
Supplies and materials-----	1,979	
Communication and transportation---	---	
Travel-----	14,400	
Rent-----	---	
Repairs and maintenance-----	---	
Other expenses-----	12,560	
Equipment-----	23,200	150,968
Total OSM funding-----		329,432

^aAll coal programs for FY 80 was for the Montana Department of State Lands unless otherwise indicated.

13. Physical resources available for use in Montana's coal program
[30 CFR 731.14(m)]

a. Office location and size

The Department of State Lands' main offices are located in Helena, Montana at 1625 11th Avenue (59601). The Department's Reclamation Division occupies approximately 2,780 feet of floor space at this address. An additional 2400 of floor space are to be added to the building with construction scheduled to begin in the Fall of 1979. This extra space is being added largely to provide office space for the extra staffing necessitated by the Department's compliance with P.L. 95-87 (see Sections 9 and 10). The Helena office phone number is (406) 449-2074.

In addition to the Reclamation Division's Helena office, the Division also maintains a small field office in Billings, Montana at 1245 N 29th Street (59101). The Billings office is 490 sq. feet. Its phone number is (406) 259-3264.

The Department of Health and Environmental Sciences' (DHES) main offices are also located in Helena. The Air Quality and Laboratory Division Bureau have their offices in the Capitol Office complex (Cogswell Building) and the Water Quality Bureau has its offices at 555 Fuller Avenue. Office space is adequate for existing staffing levels and additional office space will not be required for DHES employees under the permanent program since the one additional air quality specialist necessary will be located at DSL's Helena office (see Section 9). The Laboratory Division's chemistry laboratory, an important part of Montana's coal program is 5600 square feet in size.

The Environmental Services Division of DHES has a field office in Billings, Montana located at 3304 2nd Avenue North.

b. Vehicles

The Department of State Lands currently owns 3 vehicles which are used exclusively by the Reclamation Division for coal mine and prospecting hole inspections. These include a 1975 1/2 ton Dodge pickup, 1976 Dodge 4-wheel drive Ramcharger and a 1976 1/2 ton 4-wheel drive Chevy pickup. In addition, the Department leases a 1975 Chevrolet Suburban from the Montana Department of Highways for use during coal mine and prospecting hole inspections. Occasionally, vehicles are checked out from the state motor pool when one of the above 4 vehicles are not available. Adequate motor pool vehicles are also available to the Department of Health and Environmental Sciences.

c. Equipment

Equipment owned by the Reclamation Division of DSL is listed in Table 7 .

Table 7. Equipment owned by the Reclamation Division of the Department of State Lands

No.	Item	No.	Item
1	Noreclo Pocket Dictator	2	Hard hat w/light clip
1	H-P 97 Programmable Calculator	2	Battery pack & light
1	Conductivity Meter	2	Battery recharger (for self rescuer)
1	Monroe 1930 Calculator	2	Belt (for self rescuer)
1	300 ft. steel chain	13 pr.	Safety glasses
1	Nikon F-2 camera w/accessories	11 pr.	Safety toes
1	Nikon 80-200mm 200m Lens	1	Filling tool kit
1	Nikkormat 1825 camera	1	CB radio w/antenna
2	Hach acid mine drainage kit	1	Salinity meter S-C-T
1	Dictating equip. w/transcriber	1	300 ft. steel engineers tape
1	Kodak slide projector	1	Kern one second theodolite
1	slide carousel	1	Wooden leg extension tripod
1	Prototype camera mount	1	Surveying altimeter
1	Drafting table	1	One mile autoranger EDM
1	Roll tracing unit	1	Aluminum extension leg tripod
1	Drafting stool	3	Triple lateral prisms
1	Nikon F-2 camera w/F2 lens	1	Tribach & tribach adapter
3	Kodak tele-instamatic camera	1	Seismometer
2	Olympus 35mm camera	1	Engineering seismograph
1	Sharp 808 calculator	1	Air wave detector
1	Abney level	1	Tripod
1	Polar planimeter	1	Drying oven (for vegetation)
1	Barrell auger	1	Top loader balance
2	Wooden stadia rods	1	Rolling disk planimeter
10	Live animal traps	1	60° trapazoidal flume
1	200 ft. steel tape	1	Old-Delft scanning stereoscope
2	100 link chain- 66 ft. lufkin	1	Water level measuring device
1	Loggers tape - 75 ft.	2 pr.	Rubber packs w/safety toes
1	Brunton pocket compass	1	Portable gas-powered winkie drill with rods and bit
1	K & E pocket compass		
2	Silva range compass		
1	Increment borer w/extra bit		
1	Sony T-66 cassette recorder		
1	Movie screen		
3	Hi lift jack		
1	Wilkie peilcompass		
CT.	Metal spikes		
1	Teledyne post drafting instr.		
1	Stereoscope		
2	Leitz hand levels		
1	Suunto PM-5 clinometer		
1	Range pole 2 sections		
2	Rod targets		
1	Rod level		
1	Leveling rod		
2	Self rescuers		



In addition to the items listed in table the Reclamation Division has an adequate number of desks, phones, typewriters, file cabinets and other office supplies and materials to efficiently maintain its two offices. Several pieces of equipment listed above were purchased with OSM interim enforcement grants pursuant to 30 CFR 725.

d. Additional vehicles and equipment needed for the permanent program

Additional vehicle and equipment purchases necessary for implementing the permanent program will include:

1. The computer hardware and software necessary for a data storage and retrieval system to implement a program for designating lands unsuitable for coal mining (see Section 7k).
2. An IBM Mag Card II Typewriter to aid secretarial efficiency within the Division.
3. At least one extra vehicle for mine and prospecting inspections (this would be necessary regardless of whether we sought coal program approval).
4. Additional desks, phones, etc., as new employees are added.

It is anticipated that the above will be purchased with OSM funding pursuant to 30 CFR 740.



14. Other programs administered by the
Montana Department of State Lands (30 CFR 731.14(0))

The Department of State Lands (DSL) has two primary duties; one is the management of state-owned lands, the second is administration of state and federal mined land reclamation statutes. In accordance with such duties, the Department is organized into a Land Administration Division, a Reclamation Division and a Centralized Services Division.

Individuals on the Commissioner's staff are administratively part of the Centralized Services Division.

DSL's Land Administration Division oversees the leasing, sale, exchange, improvements, and overall management of state-owned lands. The Land Administration Program is charged with the appraisal and reclassification of all state lands by identifying and utilizing multiple-use concepts.

DSL's Centralized Services Division is charged with providing the necessary administrative services for the department. The program processes in excess of \$15 million in trust income annually and also issues and maintains surface and mineral leases on 5,000,000 acres of school trust lands. The program is responsible for distribution of the interest and income received from lands and investments and for maintaining the permanent fund accounts involving \$85,387,642.18.

Part of the Commissioner's staff includes an Environmental Administrator and three environmental planners. These individuals prepare environmental assessments for the Department. An environmental impact statement is prepared on all major actions of the Department having a significant impact on the human environment.

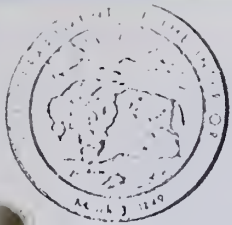
The Reclamation Division of DSL administers Montana's mined land reclamation statutes including the Montana Strip and Underground Mine Reclamation Act (coal and uranium), the Montana Strip and Underground Mine Siting Act (coal and uranium), the Montana Opencut Mining Act (sand, gravel, scoria, bentonite, clay and phosphate) and the Montana Hard Rock Mining Act (metals).

The Opencut and Hard Rock Mining Acts require that a company receive approval on a mining and reclamation plan from DSL prior to the commencement of mining. Both Acts require a company to file a performance bond and charge DSL with conduction of inspections. Penalties are imposed for violations of either Act. The Montana Hard Rock Mining Act also requires that a company permit and bond exploration activity with DSL.



Additional Correspondence Regarding
Montana's
Proposed Permanent Coal Program

1. Memo from Commissioner Leo Berry to DSL staff regarding the penalty policy for the coal and uranium bureau (January 4, 1980).
2. Letter from John North to Donald Crane regarding providing notice of exploration permit decision to those who commented on applications (January 10, 1980).
3. Letter from Brace Hayden to Donald Crane regarding permit coordination with the Montana SHPO (January 10, 1980).
4. Letter from Brace Hayden to Donald Crane regarding protection of endangered species (January 12, 1980).
5. Letter from Commissioner Leo Berry to Donald Crane regarding giving newspaper notice of all strip and underground permit decisions (January 13, 1980).
6. Memo from Dennis Hemmer to Donald Crane regarding typographical errors in Montana's coal program rules (January 13, 1980).
7. Letter from Leo Berry to John Bartlett (DHES) regarding inter-agency cooperation in administering Montana's coal program (January 14, 1980).
8. Letter from Leo Berry, Jr. to Paul Reeves regarding partial and complete inspections (January 30, 1980).
9. Letter from Leo Berry, Jr., to Paul Reeves regarding engineer certification of Class I roads (January 30, 1980).
10. Letter from Leo Berry, Jr., to Paul Reeves regarding bonding of political subdivisions (January 30, 1980).
11. Letter from Leo Berry, Jr., to Paul Reeves regarding review of permits (January 30, 1980).
12. Letter from Leo Berry, Jr., to Paul Reeves regarding notification of local government officials (January 30, 1980).
13. Memo From Dennis Hemmer to Paul Reeves regarding marcasite and pyrite analysis (January 30, 1980).
14. Letter from John North to Paul Reeves regarding inspections, the public's right to inspect documents, abatement periods, bonding and permit renewal dates (February 1, 1980).
15. Letter from Donald Crane to Dr. Robert Archibald (Montana SHPO) regarding Montana's compliance with Section 106 of the National Historic Preservation Act. (March 11, 1980).
16. Thermofax from Gene E. Kruger to Leo Berry, Jr. proposed for the Department of Interior's acceptance of Montana's State Program and of the proposed Federal Register Notice regarding the conditional approval of Montana's program (March 20, 1980).
17. Letter from Leo Berry, Jr., to Walter Heine regarding Montana's acceptance of the 6 conditions (1 law and 5 rule changes) required by the Department of Interior for approval of Montana's program (March 20, 1980).
18. Letter from Interior Secretary Cecil Andrus to Governor Tom Judge indicating conditional approval of Montana's State Coal Program effective April 1, 1980 (March 26, 1980).
19. Letter from Cecil Andrus to Leo Berry, Jr. indicating conditional approval of Montana's State Coal Program effective April 1, 1980 (March 26, 1980).



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

BROOKS TOWERS

1020 15TH STREET

DENVER, COLORADO 80202

OFFICE OF THE REGIONAL DIRECTOR

March 11, 1980

Dr. Robert Archibald
State Historic Preservation Officer
Montana Historical Society
225 North Roberts Street
Helena, Montana 59601

Dear Mr. Archibald:

Thank you for your February 11 letter expressing concern with the meshing of the requirements of Section 106 of the National Historic Preservation Act of 1966 with the authority granted the State by approval of the surface mining control permanent regulatory program.

The approval of the State regulatory program will be followed by Secretary Andrus and Governor Judge entering into a cooperative agreement for State regulation on Federal lands.

The cooperative agreement will establish the capability to delegate or share with the State the many functions of coal regulation, including: inspection and enforcement, mine plan review, environmental assessments, and compliance with Section 106 of the National Historic Preservation Act through the provisions of 36 CFR Part 800.

The role the State will assume will be decided in large part by Leo Berry, Commissioner of State Lands. However, the Advisory Council on Historic Preservation indicated that should the State wish to complete the Section 106 process, the State would have to follow the procedures outlined in the proposed Programmatic Memorandum of Agreement.

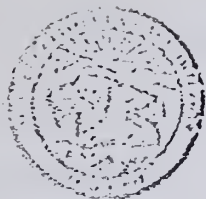
Please know that we will look into the arrangement that HUD has reached with its grantee cities concerning compliance with Section 106 of the National Historic Preservation Act and bring this knowledge to meetings with Leo. In turn, I think you ought to discuss the State assumption of these responsibilities with Leo Berry.

Sincerely,

Donald A. Crane

cc: Leo Berry ✓

Your sense!



United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

This machine is a DEX 4100 AUTOMATIC and is located in Room 10,
Interior South Building, 19th and Constitution Avenue, N. W.,
Washington, D. C. It is set up to receive at all times. If
you have any questions please contact:

202/343-5315 or 5316

(Machine no. 202/343-2314)

To: Mr. Leo Berry
Montana Dept. of State Lands
585-5260

From: Gene E. Krueger
OSM- State Programs
(202) 343-5361

No. of Pages to follow 9 Date: 3/20/80

Please contact

Mr. Leo Berry

Commissioner, Dept. of State Lands

406-449-7074

(a) The approval found in Section 926.10 will terminate on _____, unless Montana submits to the Secretary by that date copies of fully implemented regulations containing provisions which are the same or similar to those in 43 CFR 4.1290-4.1296, relating to the award of costs, including attorneys fees, in administrative proceedings, or otherwise amends its program to accomplish the same result;

(b) The approval found in Section 926.10 will terminate on _____, 1980, unless Montana submits to the Secretary by that date, copies of fully implemented regulations narrowing the discretion found in Montana 22-4-223 which states that "a political subdivision or agency of the State need not file a bond unless required to do so by the board" so that this provision is applied in a same or similar manner as Section 524 of P.L. 95-37, or otherwise amends its program to accomplish the same result;

(c) The approval found in Section 926.10 will terminate on _____ unless Montana submits copies of fully enacted legislation and, if necessary, regulations removing

the present limitation in Montana 82-4-222(3) providing that the small operator assistance program will be implemented "to the extent that it has received Federal funds for this purpose", or otherwise amends its program to accomplish the same result;

(d) The approval found in Section 926.10 will terminate on _____, 1980 unless Montana submits to the Secretary by that date, copies of fully enacted regulations removing from Rule XX(13)(b)(ii) the phrase "with respect to protection of the hydrologic balance", or otherwise amends its program to accomplish the same result; and

(e) The approval found in Section 926.10 will terminate on _____, 1980 unless Montana submits to the Secretary by that date, copies of fully enacted regulations containing provisions which are the same or similar to those in 30 CFR 343.11(a)(2) relating to: a) imposing affirmative obligations if a cessation order will not completely abate the imminent danger or harm in the "most expeditious manner physically possible" and b) an affirmative obligation may require the use of additional personnel or equipment without regard to cost, or otherwise amends its program to accomplish the same result.

()

(E) The approval found in Section 926.10 will terminate on _____, 1980 unless Montana submits to the Secretary by that date, copies of fully enacted regulations removing from Rule XXIV(1) the word "substantial" in reference to ensuring compliance with Montana law and regulations, or otherwise amends its program to accomplish the same result.

Faint, illegible text at the top of the page, possibly a header or title area.

CONDITION (a) (From proposed Federal Register notice)

The Montana Department of State Lands has the authority under Montana's Administrative Procedures Act, SUPA Section 82-4-252, and Rule III and the Montana program contains provisions for public participation in the development and revision of Montana regulations. Montana also has the authority to provide for public participation in the permitting process and in the enforcement of its laws and regulations, with one exception.

The Montana program does not provide for award of costs in administrative proceedings, including attorneys fees, in accordance with Sections 520 and 525 of SMCRA and 43 CFR 4.1290 et seq. Although Montana has enacted the basic authority for the award of costs and expenses, SMCRA and 30 CFR Chapter VII require that a State program include the regulations which detail such matters as who may file, contents of a petition, and who may receive an award. The preamble to the Federal rules, 44 FR 15297, states in part,

The Office believes that a State program must meet the following minimum criteria with respect to citizen participation:....(3) It must authorize award of costs and expenses in administrative and judicial proceedings provided under Section 520(d) and (f) and 525(e) of the Act and 43 CFR 4.

In light of this language, the Secretary believes that a State program must include provisions similar to 43 CFR 4.1290 et seq. The Montana SUPA does not make provision for such awards consistent with 43 CFR 4.1290. Montana has agreed to make the necessary revision.



Montana's provision for the award of attorney fees in judicial proceedings, SURA Section 82-4-252(5), is identical to Section 520(d) of SMCRA. There are no Federal regulations implementing Section 520(d). However, as is discussed in the response to comment 50, the Secretary believes that Montana's provision is intended to require that attorney fees may be awarded against citizen groups only where they act in bad faith.

Condition (b)

Section 524 of SMCRA, 30 USC 1274, provides that political subdivisions which engage in surface coal mining operations are subject to the full requirements of SMCRA. Montana SURA 82-4-223 gives the Department of State Lands discretion in requiring a bond from a political subdivision. The Montana Department of State Lands will, by policy dated January 30, 1980, require a bond for any mining operation operated by a political subdivision of the State in the same manner as required of all other operators.

In order to comply with Section 524 of SMCRA, Montana must revise its regulations to specify that a political subdivision must obtain a bond if it is directly conducting a coal mining operation. However, since at present no political subdivision is conducting such an operation, it is determined the Department of State Lands' policy statement is sufficient until the agreed date by which Montana will have changed its regulations.

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

1919

Main body of faint, illegible text, appearing to be several paragraphs of a document or report.

CONDITION (c)

The Montana Department of State Lands has the authority under Montana laws and the Montana program contains provisions in Rule XXVI to provide small operator assistance. However, Montana 82-4-222 implements the small operator assistance program only to the extent that the State has received Federal funds for this purpose. Such a limitation is not consistent with Section 705(c) of the SMCRA. Montana maintains that it has only approximately six operators eligible for assistance at present. The Federal funds currently available to Montana for small operator assistance are sufficient to meet the present needs of Montana. However, this may not be the case in the future and thus it is determined that the Montana law and regulations concerning small operator assistance do not fully comply with section 705(c) of SMCRA and 30 CFR 795. Montana has agreed to remove the restrictive provision from its law and regulations.

The following information is provided for your reference:

1. The first section of the document discusses the importance of maintaining accurate records.

2. The second section outlines the procedures for handling confidential information.

3. The third section details the requirements for data security and access control.

4. The fourth section describes the process for reporting and investigating security incidents.

5. The fifth section provides information on the roles and responsibilities of the security team.

6. The sixth section discusses the importance of regular security audits and assessments.

7. The seventh section outlines the process for updating and maintaining security policies.

8. The eighth section provides information on the resources available for security training and education.

9. The ninth section discusses the importance of staying up-to-date on the latest security threats and vulnerabilities.

10. The tenth section provides information on the contact information for the security team.

CONDITION (d)

1 44 FR 67943 (November 27, 1979) suspended portions of 30 CFR 805.13(d) (concerning the revegetation requirements when a long term agricultural land use is involved) and 30 CFR 808.12(c) (concerning a limitation on the areal liability under a bond) as being inconsistent with the SMCRA. Montana Rule XX(3)(b) corresponds to 30 CFR 805.13(d), but also references Rules XVI (Alternate Reclamation) and thereby avoids the inconsistent language of 30 CFR 805.13(d). In 30 CFR 808.12(c), the phrase "with respect to protection of the hydrologic balance" was suspended. Montana Rule XX(13)(b)(ii) contains provisions that mirror the suspended Federal regulation. As such, Montana Rule XX(13)(b)(ii) is determined to be inconsistent with SMCRA. Montana has agreed to amend its regulations to remove the suspended phrase.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This not only helps in tracking expenses but also ensures compliance with tax regulations.

In the second section, the author outlines the various methods used for data collection and analysis. These include surveys, interviews, and focus groups. Each method has its own strengths and weaknesses, and the choice depends on the specific research objectives.

The third part of the document focuses on the ethical considerations of research. It highlights the need for informed consent from all participants and the importance of protecting their privacy. Researchers should also be transparent about their funding sources and any potential conflicts of interest.

Finally, the document concludes with a summary of the key findings and recommendations. It suggests that future research should explore the long-term effects of the interventions being studied and the role of community support in their success.

() 5 ()

CONDITION (e)

30 CFR 243.11(a)(2) provides that if a cessation order will not completely abate the imminent danger or harm in the "most expeditious manner physically possible," affirmative obligations shall be imposed by the authorized representative of the regulatory authority. Furthermore, the affirmative obligation may require the use of existing or additional personnel and equipment without consideration of cost (44 FR 15301). Montana SURA and regulations do not explicitly contain these provisions. Montana maintains that abatement of imminent danger or of a significant environmental harm provided in Montana 82-4-251(1) would require complete abatement in order to eliminate the danger or harm. Furthermore, complete abatement would have to be as expeditious as possible and would require the use of additional personnel or equipment without regard to cost in order for the State to avoid action under its common law of mandamus. The Secretary believes that the abatement of imminent dangers or harm in an expeditious manner is an important item to be addressed in a State regulatory program. While Montana feels that it has the necessary authority and as a matter of policy would require abatement in accord with 30 CFR 243.11(a)(2), the Secretary believes that this procedure must be set forth in Montana law or regulation. The State has agreed to revise its regulations.

[The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document with several lines of text per paragraph. The content is not discernible.]

CONDITION (F)

(i) Montana Rule XXIV(1) requires that the Montana Department of State Lands inspect to ensure "substantial" compliance with Montana law and regulations. Montana has stated that this rule does not relieve the operator of the duty to

The Secretary is concerned that "substantial" compliance might be interpreted to mean something less than complete compliance.

comply completely with Montana law and regulations. Sections 82-4-231 to 235 require complete compliance with the reclamation plan and performance standards. Section 82-4-251 requires issuance of a notice of violation or suspension order for every violation. Section 82-4-254 requires a penalty to be assessed for every violation. Therefore, complete compliance with the program is required. Additionally, while Montana Rule XXIV requires at least the minimum number of inspections in accordance with 30 CFR 840, Montana interprets the rule to require the Montana Department of State Lands to make additional inspections if necessary to ensure substantial compliance with the Montana law and regulations.

Montana has agreed, as a condition of program approval, to clarify its policy by removing the word "substantial" from Rule XXIV(1). However,

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

March 20, 1980

Mr. Walter Heine, Director
Office of Surface Mining
Department of Interior
18th & C Streets, NW
Washington, D.C. 20240

Dear Walter:

The department has received by teletype on this day a copy of Secretary Andrus' six conditions to the approval of Montana's permanent program submission, which was made pursuant to 30 U.S.C. 1253. A copy of the conditions as received is attached.

Pursuant to 30 C.F.R. 732.13(1), the Department of State Lands agrees to make the modifications to its permanent program. The intent of the Secretary in conditions (a), (b), (d), (e), and (f) is clear. With condition (c) I assume that the Secretary intends that only the word "federal" be removed from 82-4-222(3), and the Department by this letter agrees to this condition.

Conditions (a), (b), (d), (e), and (f) require rule changes. The department in making the changes must comply with the rulemaking procedures of the Montana Administrative Procedures Act, which require public notice of the proposed rules, a public comment period, possibly a public hearing, consideration of comments, adoption by the Board of Land Commissioners, and publication of final rules. This procedure can probably be completed within six-months, but a slightly longer period may be required if substantial public comment is received.

Condition (c) requires a statutory amendment. The next regular session of the Montana Legislature convenes in January of 1981. It is impossible to predict precisely when a bill making the required modification could or will be passed. The legislation, if passed, could probably become effective on passage and approval, but in no case later than July 1, 1981. The department therefore suggests that the condition (c) require modification of 82-4-222(3) by July 1, 1981.

The department will immediately initiate action to bring its program into compliance with the subject modifications.

Sincerely,

Leo Berry, Jr., Commissioner
Department of State Lands



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 26 1980

Honorable Thomas L. Judge
Governor of Montana
Helena, Montana 59601

Dear Tom:

I would like to congratulate you and the State of Montana on assuming responsibility for a permanent regulatory program for surface coal mining reclamation activities. I have today approved the State's submission, effective April 1, 1980, conditioned on its correcting six deficiencies. The Montana Department of State Lands, Leo Berry, Jr., and his staff are to be commended for their efforts in the preparation of a program to fulfill the mandates and objectives of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

Since its initial program submission on August 3, 1979, the Department of State Lands has maintained a posture of total cooperation with the Department in achieving our mutual goal of implementing P.L. 95-87. Throughout, it has worked closely with the Office of Surface Mining (OSM). The Department's willingness to correct deficiencies and make adjustments in a timely manner is a clear indication of the State's commitment to balancing the need for environmental protection with the equally important goal of maximum resource utilization.

Review of the Montana program shows that Montana has the necessary authority and capability to administer and enforce the permanent regulatory program with six exceptions. The minor deficiencies involve: (1) limiting the discretion of the Board with regard to bonding of State agencies and local governments; (2) the award of costs, including attorneys fees, in administrative hearings; (3) removing the statutory



Main body of handwritten text, consisting of several paragraphs of cursive script.

limitation on small operator assistance program funding to the extent that "Federal" funds are available; (4) revision of bonding regulations which contain language from Federal regulations which have been suspended; (5) the lack of regulations concerning the imposition of affirmative obligations when a cessation order will not abate completely the imminent danger or harm in the "most expeditious manner physically possible", and (6) removing the word "substantial" from the regulation ensuring compliance with Montana law and regulations through inspections. We have been in close contact with the Department of State Lands and it has agreed to correct the deficiencies involving regulations by November 1, 1980, and the statutory deficiency by July 1, 1981. These corrections by the specified dates will remove all reservations on my approval.

I am pleased that Montana has taken the lead in acquiring approval of its program and sincerely look forward to working with you on our mutual concerns and interests.

I enclose a copy of the Federal Register notice which formally announces this decision and which the Department will publish shortly.

Sincerely,

(Sgd) Cecé

SECRETARY

Enclosure

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text in the middle of the page.

Third block of faint, illegible text at the bottom of the page.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 26 1980

Mr. Leo Berry, Jr.
Commissioner
Department of State Lands
Capitol Station
Helena, Montana 59601

Dear Mr. Berry:

I congratulate you and the Department of State Lands for gaining primacy in the regulation of surface coal mining operations under the Surface Mining Control and Reclamation Act. I have approved the State's program effective April 1, 1980. My approval is necessarily conditioned on correcting six minor deficiencies. Your staff is to be commended for its preparation of a program to fulfill the mandates and objectives of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87). The approval is effective upon publication in the Federal Register.

Since your initial program submission on August 3, 1979, the Department of State Lands has maintained a posture of total cooperation with the Department in achieving our mutual goal of implementing P.L. 95-87. The Department is extremely pleased with the close working relationship which has been maintained between your staff and the Office of Surface Mining throughout the review process. The willingness on the part of the Department to correct deficiencies and make adjustments in a timely manner is a clear indication of the State's commitment to balancing the need for environmental protection with the equally important goal of maximum resource utilization.

Review of the Montana program shows that Montana has the necessary authority and capability to administer and enforce the permanent regulatory program with six exceptions. The minor deficiencies involve: (1) limiting the discretion of the Board with regard to bonding of State agencies and local governments; (2) the award of costs, including attorney's fees, in administrative hearings; (3) removing the statutory limitation on small operator assistance program funding to the extent that "Federal" funds are available; (4) revision of

Journal Entries

1. Debit Cash, Credit Accounts Payable

2. Debit Accounts Payable, Credit Cash

3. Debit Cash, Credit Accounts Payable

4. Debit Cash, Credit Accounts Payable

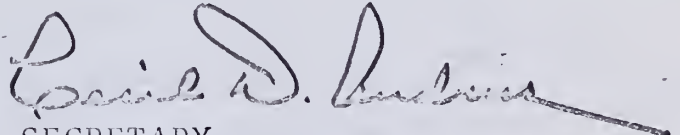
bonding regulations which contain language from Federal regulations which have been suspended; (5) the lack of regulations concerning the imposition of affirmative obligations when a cessation order will not abate completely the imminent danger or harm in the "most expeditious manner physically possible", and (6) removing the word "substantial" from the regulation ensuring compliance with Montana law and regulations through inspections.

I am pleased that the Department of State Lands has agreed to correct the deficiencies involving regulations by November 1, 1980, and the statutory deficiency by July 1, 1981. These corrections by the specified dates will remove all reservations on my approval.

I am also pleased that Montana has taken the lead in acquiring approval of its program and look forward to working with you on our mutual concerns and interests.

I enclose a copy of the Federal Register notice formally announcing this decision which the Department expects to publish shortly.

Sincerely,

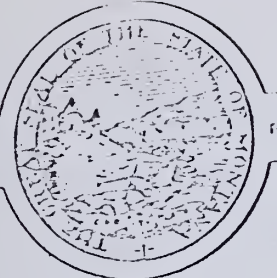

SECRETARY

Enclosure

[Faint, illegible text, possibly bleed-through from the reverse side of the page]

[Faint, illegible text, possibly bleed-through from the reverse side of the page]

THOMAS L. JUDGE, GOVERNOR



STATE OF MONTANA

(AOS) 449-2074

LEO BERRY, COMMISSIONER

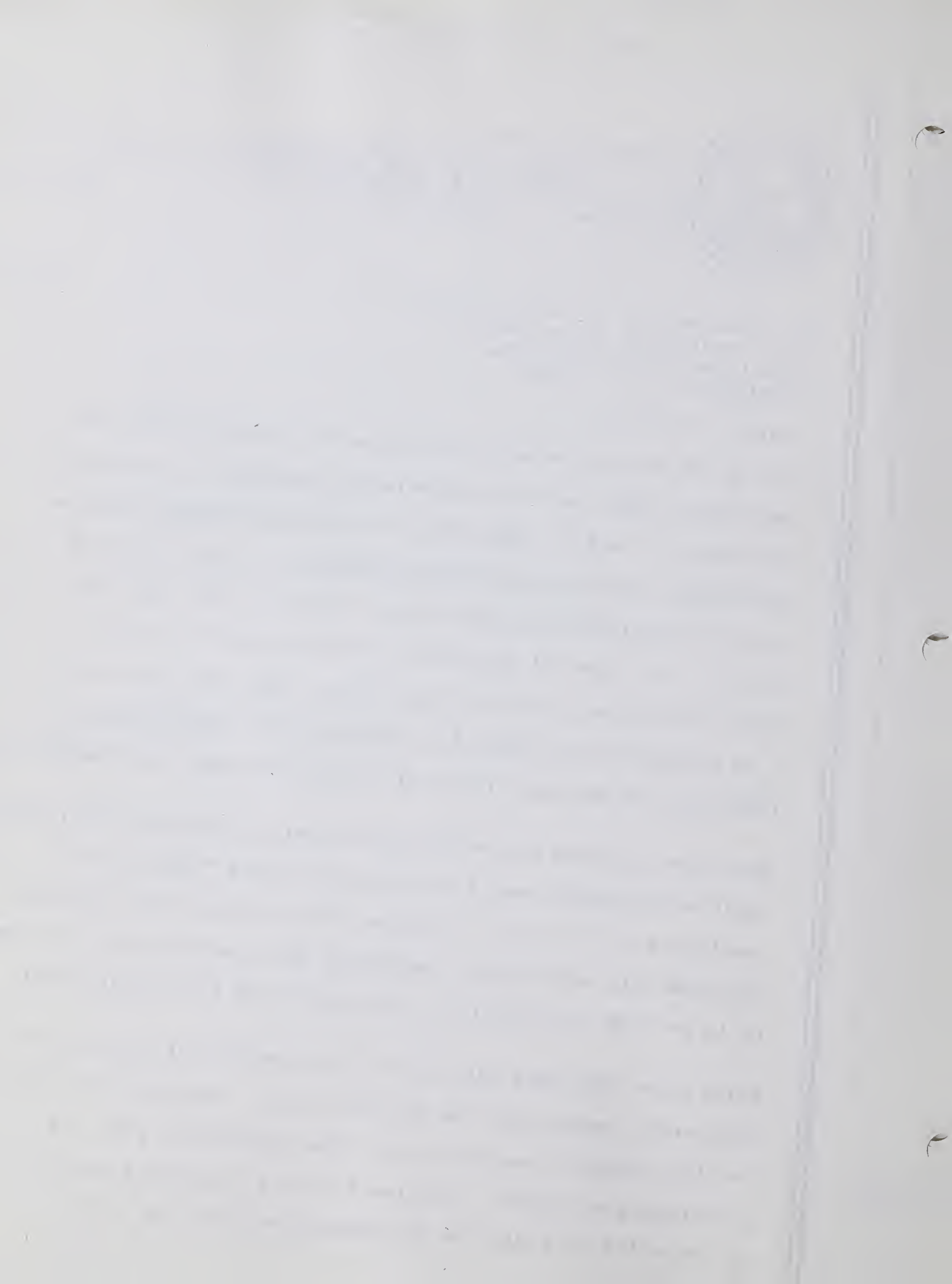
1525 FIFTEEN AVENUE
HELENA, MONTANA 59601

1 FEB 1980

Mr. Paul Reeves, Deputy Director
U.S. Department of the Interior
1951 Constitution Av. N.W.
Washington, D.C. 20240

Dear Mr. Reeves:

During the meeting between the Office of Surface Mining and the Montana Department of State Lands conducted in Washington on January 27 and 28 regarding the Montana permanent program submission, several questions regarding the legal effect of certain constitutional provisions, statutes, and rules has arisen. As a Special Assistant Attorney General for the State of Montana and Chief Legal Counsel for the Department, I am authorized to render for the Department legal opinions regarding the Montana Strip and Underground Mine Reclamation Act. The first question has arisen with regard to Rule XXIV(1), which requires the department to inspect to ensure "substantial" compliance with the act. OSM questions whether this language requires only substantial compliance by permittees and whether it is as high as standard as that set by 30 C.F.R. 840.11(a). First, the rule does not relieve the operator of the duty to completely comply with the act and rules. Sections 82-4-231-235 require complete compliance with the reclamation plan and performance standards. Section 82-4-251 requires issuance of an notice of violation or suspension order for every



violation. Section 82-4-254 requires a penalty to be assessed for every violation. Therefore, complete, not substantial, compliance with the program is required of the permittee.

Second, the Rule XXIV is more stringent than 30 C.F.R. 840.11(a) in the area of detection of violations. The federal rule requires that the regulatory authority conduct a complete inspection of every permitted mining operation at least once a quarter and a partial inspection at least once a month. The rule further provides that the regulatory authority collect evidence of every violation. During the meeting OSM officials indicated that this latter requirement applies to all violations observed by the inspector.

The Montana provision makes the same minimal requirements as to the inspection schedule. However, Rule XXIV requires the department to make additional inspections if they are necessary to ensure substantial compliance with the act. There appears to be no parallel federal requirement.

As stated above, even though the language of the federal rule, read literally, requires collection of evidence with regard to every violation, OSM has indicated that the requirement applies to every violation observed by the inspector exercising due diligence in inspecting. The problem is that the federal rule imposes strict liability to observe every violation, which is an impossible standard. This problem is not a critical one for OSM because the federal government has

sovereign immunity. However, sovereign immunity has been abolished in Montana. To impose a type of strict liability to detect every violation is not acceptable. For this reason, the department has required inspection for substantial compliance. This means that the department must exercise due diligence in its inspections and, because every violation observed must result in a penalty assessment, collect evidence as to every violation observed. In addition, as pointed out above, Rule XXIV imposes an obligation to conduct more frequent inspections, if necessary, than the federal rule.

The second question is whether the Department, as is required in 30 C.F.R. 840.12(b), has authority to enter a mine site to inspect without a search warrant. The coal industry in Montana has been a closely regulated industry since passage of the first reclamation act in the late 1960's. Since that time the department has conducted frequent and detailed inspections without search warrants to enforce the reclamation act. No rule or statute in the interim or permanent programs requires the department to obtain a search warrant. For these reasons it is my opinion that the department may inspect coal prospecting or mining operations for compliance with the permanent program without a search warrant.

The third question concerns Montana's compliance with 30 C.F.R. 840.12(c) and (d), which require the regulatory authority to have the authority to require interim steps in notices of violation. Section 82-4-251(2) requires that the Commissioner

or his authorized representative issue an order requiring abatement. It is my opinion that the authority to require complete abatement includes the authority to require interim steps necessary to achieve complete abatement. The Commissioner and his authorized representatives therefore have authority to require interim steps in the notice of violation.

The fourth question involves an interpretation of Article II, Section 9 of the Montana Constitution, which provides:

No person shall be deprived of the right to examine documents or to observe the deliberations of government and its subdivisions, except in cases where the demand of individual privacy clearly exceeds the merits of public disclosure.

The question is whether the exception allows the department to deprive the public of access to information to which it is entitled under federal regulations. Recently a district court has held that only natural persons, and not corporations, have the right to privacy in Montana. More important, the transcript of the 1972 Montana Constitutional Convention indicates that the exception applies only to personnel matters, litigation, tax records, welfare records, jury deliberations, Supreme Court deliberations, and attorney-client communications. None of these are required to be disclosed in the federal rules. Therefore, nothing which is required to be disclosed to the public under the federal rules can be kept confidential under the Montana provision

The fifth question is whether 82-4-251(2) allows the department to extend the abatement period beyond 90 days. That section provides that the department must fix a reasonable time, not exceeding 90 days, for abatement. The next sentence begins with the following phrase:

If, upon expiration of the period of time
or originally fixed or subsequently extended,...

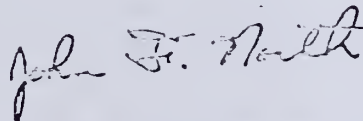
[underlining added]

The question has arisen because of the possibility that the underlined language could be construed as allowing an extension beyond 90 days. However, the sentence setting forth the 90-day requirement is the only one dealing with the setting of a time frame. The next sentence, partially quoted above, does not authorize extensions. It merely refers to extensions authorized by the previous sentence. Under the previous sentence, the original time for abatement and any extension, when added together, cannot exceed 90 days.

The sixth question regards bonding. The state's bond form allows cancellation of bond only for undisturbed areas. Because this form is not a rule, the question has arisen as to whether Montana is required to retain that provision in its bond form. It should be noted that the bond form has in the past been a rule, but that recently the Montana Secretary of State, who publishes the Administrative Rules of Montana and has authority over format, has prohibited the promulgation of forms as rules. Section 82-4-23 requires department to

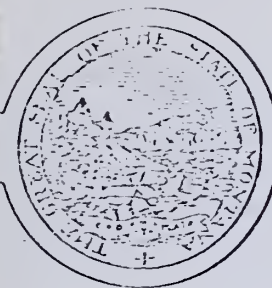
may be waived by the department. There is no penalty for early submittal, should the department require or accept it. The provision is therefore directory rather than mandatory. The department therefore has the authority to accept renewal applications earlier than 60 days prior to the renewal date. This interpretation is bolstered by the statement of intent of the Montana Legislature which accompanied Senate Bill 515, the legislation by which the legislature sought to bring Montana's statute in to complete compliance with federal requirements. That statement provides that it was the intent of the legislature to give the department authority to adopt the rules necessary to bring Montana's program into compliance with the federal program.

Sincerely



John F. North
Chief Legal Counsel and
Special Assistant Attorney General

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

JAN 30 1980

MEMO

To: Paul Reeves, Deputy Director, Office of Surface Mining
From: Dennis Henner, Montana Department of State Lands *D.H.*
Re: Marcasite and Pyrite analyses

At issue is the fact that Montana does not specifically require pyrite and marcasite analysis of the coal seam as required by 30 CFR 779.14(b)(v).

The purpose of the OSM requirements for mineralogical analysis of the coal seams is to identify the principal forms of inorganic sulfur in the coal that may be subject to oxidation when exposed to air and water, and which may lead to acid drainage from the mined areas. The differentiation between marcasite and pyrite (inorganic forms of sulfur) is considered useful to identify areas where the theoretically faster oxidized marcasite predominates and thus areas where acid drainage conditions may be more likely.

Montana feels that since its coal is low in sulfur content (see attached table) total sulfur is a sufficient measure of the potential for acid mine drainage. That is, a sulfur content higher than that normally encountered would alert the state to a potential acid mine drainage problem even though the sulfur content would not be considered, out of the ordinary for a "higher sulfur" area. If above normal sulfur is encountered Montana does have the ability in Rule II (3)(g) to require a further breakdown of the sulfur (i.e. marcasite and pyrite). Page 9 of Montana's guidelines for analysis of coal does require a pyrite sulfur content of coal.

Acid mine drainage usually comes from one of two sources (1) oxidation of sulfur in the coal remaining in the rooms and pillars of an underground mine, or (2) coal wastes from coal processing plants which contain sulfide minerals such as pyrite and marcasite. Montana has one underground coal mine and no coal processing facilities.

As pointed out, Montana requires chemical and physical analyses of any material that may be acid producing. The Montana program also reiterates the Federal requirements to conduct all activities to minimize disturbances to the hydrologic balance (VII(1)), to selectively place and seal acid-forming and toxic-forming materials (VII(1)(c)), to avoid drainage from acid- and toxic-forming spoil (VII(9)) and VII(11)), to backfill material to minimize adverse effects on ground water (IV(1)(c)), to cover acid-forming and toxic-forming material with a minimum of 8 feet of non-toxic and non-combustible material (IV(1)(h)), to backfill to prevent leaching (IV(1)(k)), to keep acid-forming and toxic-forming materials out of drainage channels (IV(1)(h)), and designing mines to prevent acid mine drainage (XVIII(2)(a)(v)(i)). Thus any acid-forming coal materials which might be encountered would have to be addressed in the context of complying with these protective measures.

Since Montana's coal is low in sulfur, there is only one underground mine and no coal processing plants, and that if a potentially acid producing area were encountered Montana has the same protective standards, Montana feels that the same environmental protection is achieved without specifically requiring a separate pyrite and marcasite analysis.

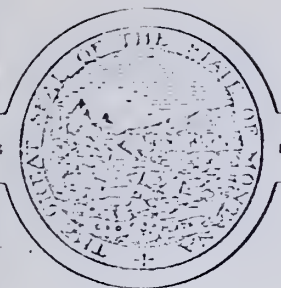
COAL ANALYSIS TABLE

COMPANY	Sulfur %			Pyritic Sulfur %			Organic Sulfur %		
	Hi	Lo	Av	Hi	Lo	Av	Hi	Lo	Av
Portland	1.01	0.51	0.68	NA	NA	NA	NA	NA	NA
Energy	1.65	0.97	0.84	0.50	0.19	0.40	0.53	0.33	0.43
...	0.90	0.25	0.44	0.37	0.03	0.13	0.53	0.22	0.31
Coal	2.0	1.11	2.00	1.67	0.82	1.21	1.33	0.59	0.93
Knife River				NA	NA	NA	NA	NA	NA

1. Oct. - Nov. 1979 samples - 9 analyses Absaloka Mine
 2. Air Quality Bureau 1978 data of over 300 samples - range only. Pyritic and organic sulfur data taken from LNE Area E coal analysis - 5 samples.
 3. Becker data obtained by phone - George Huebner, Coal Bureau.
 4. Beartooth Mining Co. is an underground rather than a surface mine.
 5. Knife River produces lignite coal for the Montana-Dakota Utilities facility (power plant) at Sidney, Montana.
- With the exception of the Knife River coal, all other coal mines tabulated are subbituminous.

COAL CLASSIFICATION

	Btu/lb.	Basis
Lignite A	6300-8300	moist-mineral free
Lignite B	less than 6300	moist-mineral free
Subbituminous A	10,500-11,500	moist-mineral free
Subbituminous B	9,500-10,500	moist-mineral free
Subbituminous C	8,300-9,500	moist-mineral free



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1525 ELEVENTH AVENUE
HELENA, MONTANA 59601

JAN 30 1930

Mr. Paul Reeves, Deputy Director
Office of Surface Mining
U.S. Department of the Interior
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

Re: Notification of local government officials

Dear: Mr. Reeves

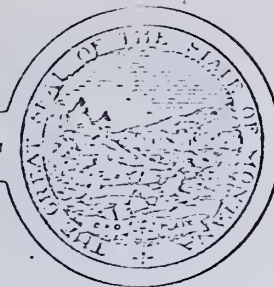
As a matter of policy, the Montana Department of State Lands will notify the local government officials in the local political subdivision in which the area of land affected is located within 10 days after granting a mining or test pit prospecting permit. The notification will include the location of the lands within the permit area.

Sincerely

Leo Berry, Jr. by J.F.N.

Leo Berry Jr.
Commissioner





THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(405) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

JAN 30 1980

Mr. Paul Reeves, Deputy Director
Office of Surface Mining
U.S. Department of the Interior
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

Re: Renewal of permits

Dear: Mr. Reeves

As detailed in John North's opinion, the Department of State Lands has the authority to extend the period during which the Department may receive an application for a permit renewal. The Department will accept applications for renewal more than 60 days prior to the expiration of the permit in order to comply with the notice and public comment provisions of Rule III.

Sincerely

Leo Berry, Jr. by J.F.N.

Leo Berry Jr.
Commissioner



1775

1775

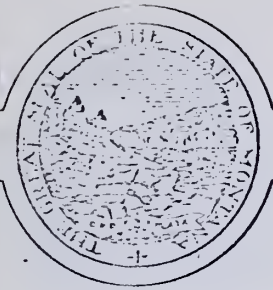
1775

1775

1775

1775

1775



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(405) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

JAN 30 1930

Mr. Paul Reeves, Deputy Director
Office of Surface Mining
U.S. Department of the Interior
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

Re: Bonding of Political subdivisions of the State

Dear: Mr. Reeves

As you are aware 82-4-223(2) MCA gives the Department discretion in requiring a bond from a political subdivision of the State of Montana. The Department of State Lands will, by policy, require a bond for any mining operation operated by a political subdivision of the State as required of all other operators unless the Department and the Office of Surface Mining mutually agree that one is not required.

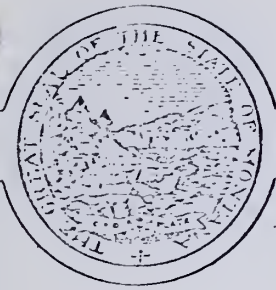
Sincerely

Leo Berry, Jr. by J.S.N.
Leo Berry Jr.
Commissioner

Handwritten Title

Handwritten text, possibly a list or notes, covering the middle section of the page. The text is extremely faint and illegible.

Handwritten text at the bottom right of the page, possibly a signature or date.



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

JAN 30 1980

Mr. Paul Reeves, Deputy Director
Office of Surface Mining
U.S. Department of the Interior
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

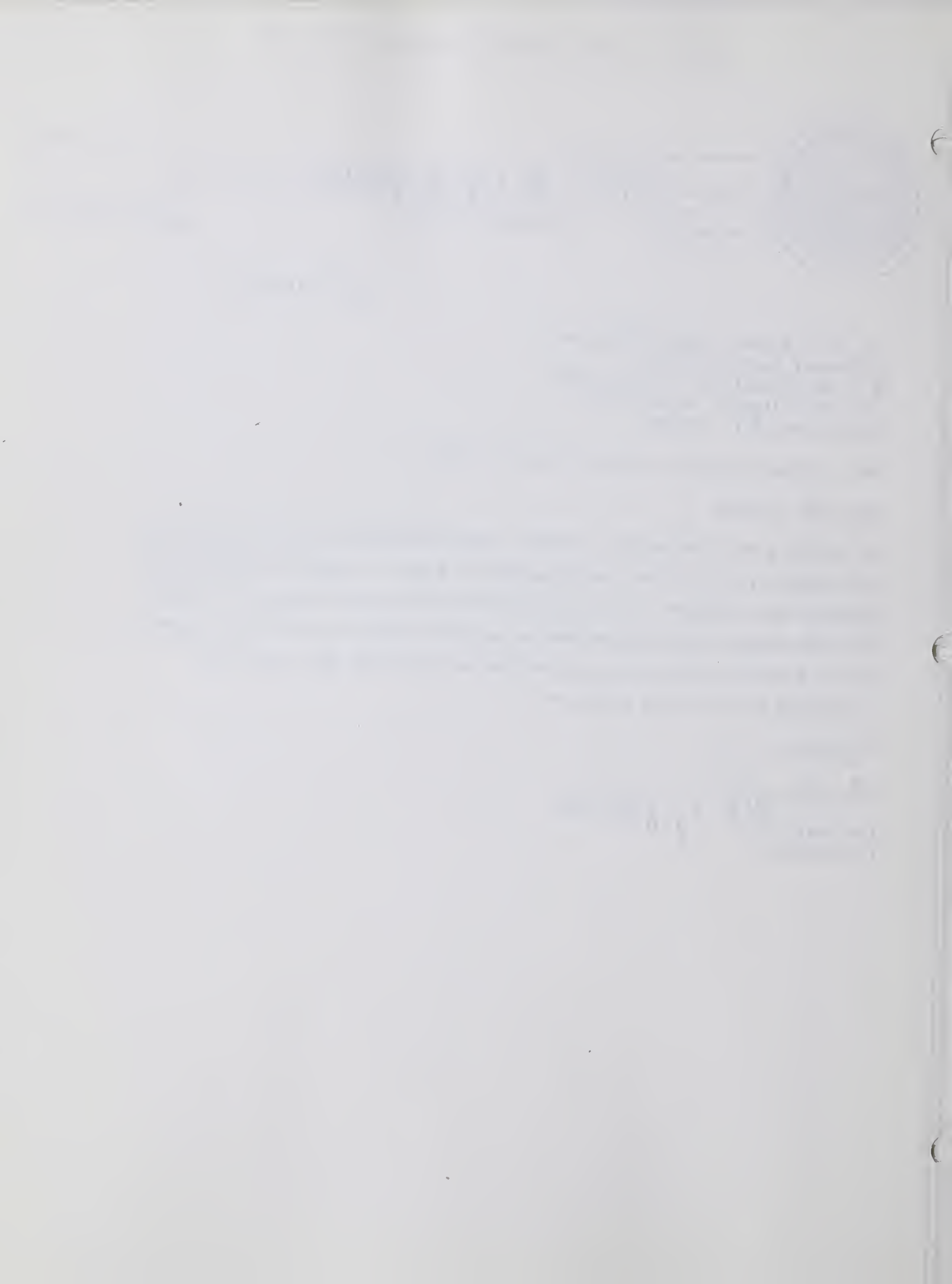
Re: Engineer certification of Class I roads.

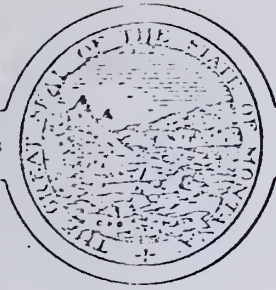
Dear: Mr. Reeves

As outlined in John North's opinion, the Department of State lands has the authority to require certification of Class I roads by a registered professional engineer. On all applications the Department will require that the design and construction or reconstruction of all Class I roads for coal mine and test put prospecting be certified by a qualified registered professional engineer.

Sincerely

Leo Berry, Jr.
Leo Berry Jr.
Commissioner





THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

JAN 30 1980

Mr. Paul Reeves
Deputy Director
Office of Surface Mining
U.S. Department of the Interior
1950 Constitution Avenue, N.W.
Washington, D.C. 20240

Re: State Inspections

Dear Mr. Reeves:

As per our conversation of January 27, please be advised that the partial and complete inspections referred to in Rule XXIV of the Montana program are on-site, on-the-ground inspections. A complete inspection is an inspection of the entire permit area for complete compliance with all applicable requirements of the law and rules.

Sincerely,

Leo Berry, Jr.
by *J. F. M.*

Leo Berry, Jr.
Commissioner

11-11-11

11

11

11

11-11-11

11-11-11

11-11-11

11-11-11

11-11-11

11-11-11

11-11-11

11-11-11

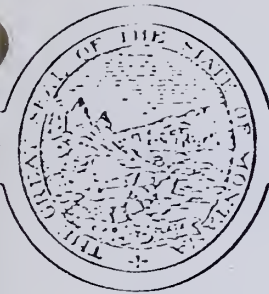
11-11-11

11-11-11

11

11-11-11

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1525 ELEVENTH AVENUE
HELENA, MONTANA 59601

January 14, 1980

Mr. John W. Bartlett
Deputy Director
Montana Department of Health
& Environmental Sciences
Cogswell Building
Capitol Station
Helena, MT 59601

Re: Interagency Cooperation in
Administering Montana's Coal
Program

Dear John:

I would like to re-affirm the past policy of cooperation in the administration of Montana's coal program.

The Department of State Lands (DSL) will continue to coordinate its coal permit responsibilities with the permit responsibilities of the Department of Health and Environmental Sciences (DHES). DHES has statutory responsibility for the protection of air and water quality in Montana and pursuant to such responsibility issues air quality and NPDES permits for coal mines. Accordingly, when DSL reviews a coal mining permit application, it will inform the applicant of related DHES requirements.

Also, upon receipt of a permit application, the DSL Coal Bureau Chief will contact both the Air and Water Quality Bureau Chiefs so that the permit review time frames of the two agencies can be coordinated. Data and staff support will be shared during the permit review process and such coordination shall extend to joint inspections and joint environmental impact statements where necessary.

After permit issuance, joint inspections will continue to be made wherever possible and I have informed the Coal Bureau Chief to send our mine inspection schedules to both the Air and Water Quality Bureau Chiefs. When problems that potentially impact air or water quality are noted by the DSL staff, the appropriate members of your staff will be quickly informed and DSL will expect the same from DHES staff.

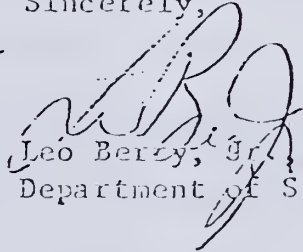


Inter-departmental cooperation with regard to air quality issues should be greatly enhanced by the agreement reached in our July 27, 1979 and August 3, 1979 letters of understanding.

Again it is understood that DHES will continue to enforce all state air and water quality statutes as they apply to coal mining.

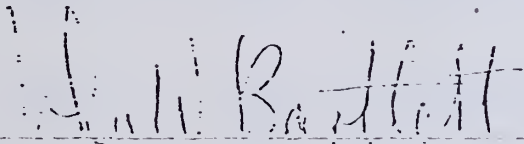
If you concur with the statements in this letter, please sign on the line below and thank you for your assistance in helping this agency administer Montana's coal program.

Sincerely,



Leo Berzy, Jr., Commission
Department of State Lands

Concur:

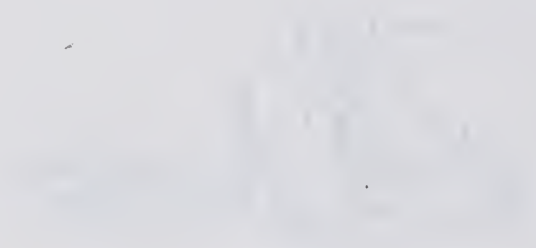


John Bartlett, Deputy Director
Department of Health and Environmental Sciences

c: Regional Director, OSM-V
Regional Director, EPA

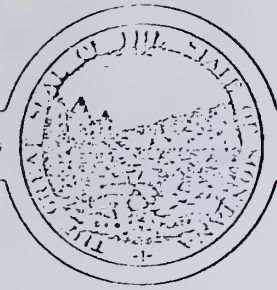
BH:ta

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.



Faint, illegible text at the bottom of the page, possibly a footer or concluding paragraph.

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1525 ELEVENTH AVENUE
HELENA, MONTANA 59601

1/13/80

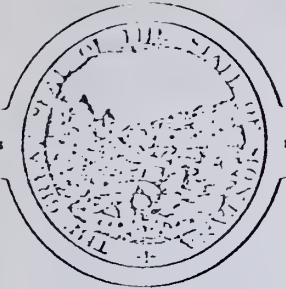
MEMO

To: Donald Crane, Regional Director, Office of Surface Mining
From: Dennis Hemmer, Coal and Uranium Bureau Chief, Montana Department
of State Lands
Re: Typographical errors in Montana's rules

The following are the known typographical errors in Montana's rules. While they by no means include all errors in the rules, they hopefully include all errors which affect the content of the rules.

- Page 18 Rule II (2)(w)(iii) should read "...prior to the approval of the..."
- Page 49 Rule III (6)(b)(ii)(C) should read "...for those activities; and"
- Page 57 Rule IV (7) the first sentence should read "Spoil not required to achieve
- Page 77 Rule VII (3)(a) the first sentence should read "All surface drainage from the disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area."
- Page 81 Rule VII (5)(b)(i)(E) Should read "energy dissapators shall be installed when necessary at streams where the exit velocity of the diversion is greater than that of the receiving stream."
- Page 113 Rule XVI (1) the first sentence should read "Each operator who desires to conduct alternate reclamation pursuant to section 82-4-232 (6) shall..."





THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

January 13, 1980

Mr. Donald A. Crane
Regional Director
Office of Surface Mining
1020 - 15th Street
Denver, CO 80202

Dear Don:

You have pointed out that 30 CFR 786.23(e)(2) requires that the regulatory authority give public notice by newspaper publication of its decision on a surface mining permit application and that 776.14(a) has a similar requirement for exploration of more than 250 tons. You also point out that on its face the Montana program does not appear to have a parallel requirement.

However, you should be advised that Section 2-3-104 MCA requires public notice of an action of State government which is of significant interest to the public. This notice must be given in time to allow the public to have input into the final decision on the agency.

One of the principal means of public input into a final decision on a mine permit application is through the Administrative Appeal process. Section 2-3-104 MCA therefore requires public notice in order to allow the public to exercise its right of administrative appeal.

Because the Department of State Lands is of the opinion that it can best fulfill the notice requirement by following the procedures set forth in 30 CFR 786.23(e)(2) and 776.14(a), the Department will provide public notice by publishing notice in a newspaper of general circulation in the general area of the proposed operation. This will be done for all strip and underground mine permit decisions and all test pit exploration permit decisions (the Montana equivalent of exploration for more than 250 tons).

Handwritten Title

Handwritten text block 1

Handwritten text block 2

Handwritten text block 3

Handwritten text block 4

Donald A. Crane
January 13, 1980
Page Two

This letter supercedes the letter of January 10, 1980 regarding test pit permit applications because the Department is of the opinion that the newspaper notice procedure best assures compliance with Section 2-3-104.

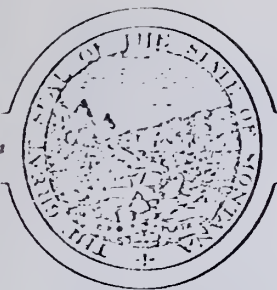
Thank you for allowing the State to submit this clarification of its program.

Sincerely,

Leo Berry Jr
Leo Berry, Jr.
Commissioner *by [Signature]*



DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

January 12, 1980

Mr. Donald A. Crane
Regional Director
Office of Surface Mining
1020 15th Street
Denver, CO 80202

Re: Endangered Species and Habitats
of Endangered Species

Dear Donald:

The Department of State Lands wishes to clarify the description given on page 31 of its revised permanent program text regarding consultation with agencies having jurisdiction over fish and wildlife resources.

Montana's permanent program Rule II(3)(1)(i) requires the permit applicant to provide:

"a listing of the fish and wildlife (including, but not limited to birds, mammal, fishes, reptiles, and amphibians) species utilizing the permit area, including any species on the rare and endangered list prepared by the U.S. Bureau of Sports Fisheries and Wildlife (Threatened Wildlife of the United States);"

The Department will make sure that for every permit application this list is consulted and it will refer all questions regarding this list to the U.S. Fish and Wildlife Service.

Montana's permanent program Rule II(3)(1)(v) requires the permit applicant to provide a wildlife habitat map for the entire wildlife survey area.

Should an endangered species or its habitat be identified in a permit application, the Department of State Lands would not allow mining to occur in that area pursuant to 82-4-227(2)(a) MCA. This Section of

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

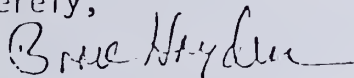
SUBJECT: [Illegible]

[Illegible text follows, consisting of several paragraphs of a memorandum format.]

Page 2
Donald A. Crane
Endangered Species
January 12, 1980

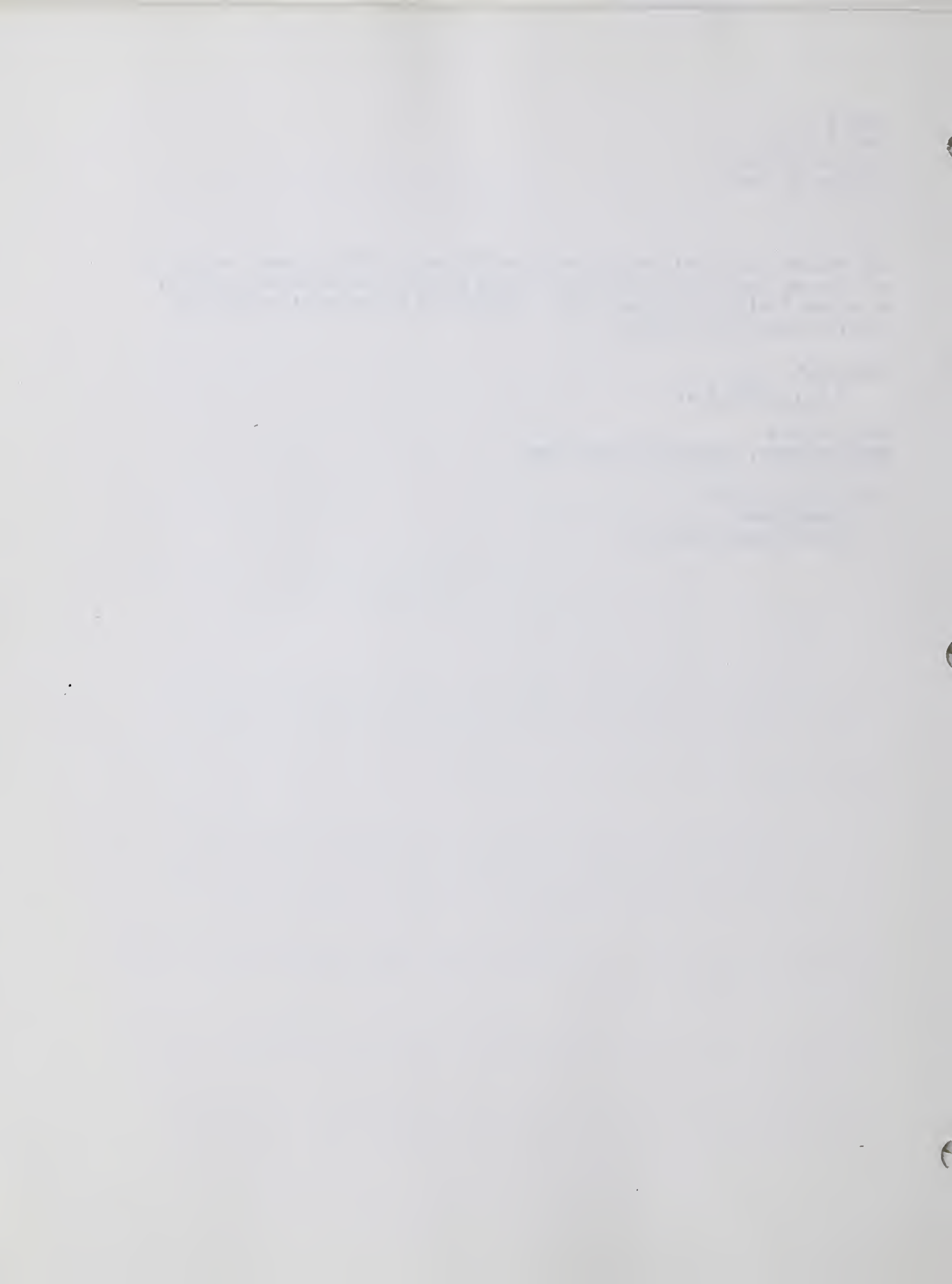
the Montana Strip and Underground Mine Reclamation Act prevents approval of a permit application for areas having special, exceptional, critical or unique biological productivity, the loss of which would jeopardize certain species of wildlife.

Sincerely,



Brace Hayden
Administrator, Reclamation Division

cc: Leo Berry, Jr.
John North
Area Manager, US FWS



DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

January 10, 1980

Mr. Donald A. Crane
Regional Director
Office of Surface Mining
Brooks Towers
1020 15th Street
Denver, CO 80202

Dear Don:

Your agency has noted that the Montana rules do not have a counterpart to 30 CFR 776.14(a) requirement that the regulatory authority provide newspaper notice of the decision on an exploration permit application.

Rule III(1) provides that the Department of State Lands must publish newspaper notice of prospecting permit applications for removal of more than 250 tons. Also required in Rule XIX(8)(d) is notice by posting at the courthouse. Both notices must invite public comment. The Federal notice requirement for applications is for posting only. The State requirement therefore provides more public notice at the application stage.

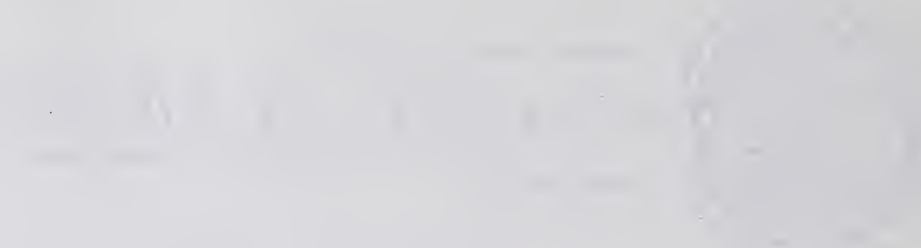
Although it is not expressly required in the rules, the Department will provide notice, by mail, on the same date as mailing of notice to the applicant, of the permit decision to all persons who commented on the application.

The State submits that this requirement provides for public notice at least equal to, if not superior to, the newspaper legal notice requirement of 30 CFR 776.14(a).

Sincerely,

A handwritten signature in cursive script that reads "John F. North".

John F. North
Chief Legal Counsel



Section 1

Text block 1: This section contains several lines of faint text, likely describing a process or a set of instructions.

Text block 2: This section contains several lines of faint text, continuing the content from the previous section.

Text block 3: This section contains several lines of faint text, continuing the content from the previous section.

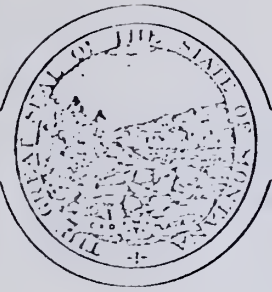
Text block 4: This section contains several lines of faint text, continuing the content from the previous section.

Text block 5: This section contains several lines of faint text, continuing the content from the previous section.

Text block 6: This section contains several lines of faint text, likely serving as a conclusion or a summary.

Text block 7: This section contains several lines of faint text, likely serving as a conclusion or a summary.

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

January 10, 1980

Mr. Donald A. Crane
Regional Director
Office of Surface Mining
Brooks Towers
1020 - 15th Street
Denver, CO 80202

Re: Cultural Resource Protection
Provisions in Montana's
State Program

Dear Donald:

An error exists on page 31a of Montana's revised permanent coal program text (November 13, 1979). The reference to 30 CFR 106 should be changed to read "Section 106 of the National Historic Preservation Act of 1966."

The Department of State Lands wishes to clarify the description given on page 31a of how it will coordinate the permit review process with the Montana State Historic Preservation Office. Montana's Permanent Program Rule II(3)(a) and (b) and Rule II(3)(o)(H) require that a cultural resource inventory be performed for all proposed mine areas. Rule II(3)(o) specifically requires that the applicant identify:

- (H) the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the mine plan or adjacent areas;

For non-Federal lands, the Department of State Lands (DSL) will request that the Montana State Historic Preservation Office (SHPO) review the applicant's cultural survey and provide recommendations regarding mitigations of any identified sites. Should a cultural site be identified that is considered by the State to possess special, exceptional, critical or unique qualities, DSL would not allow mining to occur in that area pursuant to 82-4-227(2)(d) MCA. Pursuant to this section of Montana's Act, DSL would

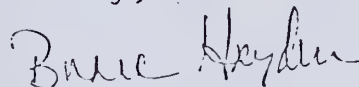
January 10, 1980
Donald A. Crane
Cultural Resource Protection
Page Two

not approve coal mining of any cultural or historical resources listed or eligible for the National Register.

With regard to cultural resources on Federal lands proposed for mining, the Montana SHPO will be responsible for insuring that the requirements of Section 106 of the National Historic Preservation Act of 1966 are met prior to mine-related disturbance. As in the past, DSL will be responsible for seeing that SHPO promptly receives cultural inventories prepared for proposed mine areas. SHPO will be notified of DSL's decision making time frames for each permit.

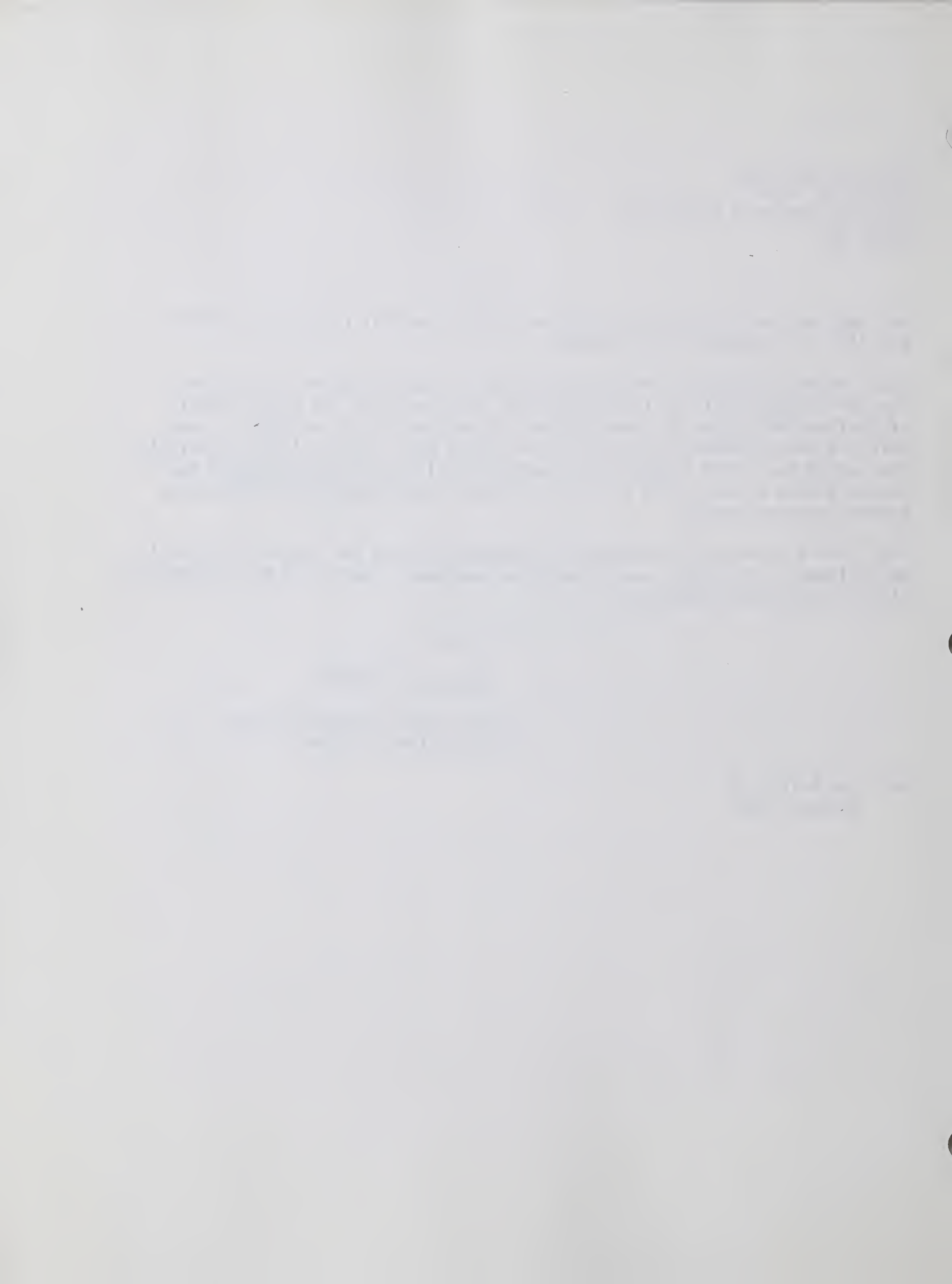
Coal permit coordination between the Montana DSL and the Montana SHPO will be included in Montana's new cooperative agreement that is to be renegotiated after state program approval.

Sincerely,



Brace Hayden, Administrator
Reclamation Division

cc: Leo Berry, Jr.
Montana SHPO



DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

MEMO

TO: Brace Hayden, John North and Dennis Hemmer
FROM: Leo Berry, Jr., Commissioner
RE: Penalty Policy for the Coal and Uranium Bureau
DATE: January 4, 1980

Since the passage of Montana strip mine reclamation act, the Department has handled the assessment of fines for violations in an informal but specified manner. The amount of penalty for a particular violation has been based on the amount assessed for the same violation of the same gravity in the past. The gravity of violations is determined using the four factors enumerated below. The appendix to this memo demonstrates the penalty assessed in the past for typical violations using the four factors. The department will continue to assess penalties in the same manner and range (or higher) as it has in the past. It should be noted, however, that these penalties are based on the present maximums of \$2,000 for the first day of violation and \$1,000 for each day of the same violation thereafter. Upon OSM approval of Montana's program, the maximum will be \$10,000 for the first day and \$5,000 for each day thereafter. Penalties will therefore be higher after implementation of the permanent program.

Once the notice of violation is issued, the Legal Counsel, the Coal and Uranium Bureau Chief and the Reclamation Division Administrator shall confer and recommend to the Commissioner any civil penalty in the amount of \$100 to \$5,000 for the violation and \$100 to \$5,000 for each day that the violation continues. The amount of penalty to be assessed shall be based on the following factors:

1. The seriousness of the violation. The extent of environmental damage or other appropriate factors shall be considered as well as any impairment of reclamation success.
2. Negligence. A nonnegligent violation is inadvertent and unavoidable by the exercise of reasonable care.
3. History of operator's violations. The nature and frequency of the particular type of violation.

THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES

OF THE UNITED STATES OF AMERICA

BY JAMES M. SMITH

The history of the United States is a story of a people who have grown from a small colony of immigrants to a great nation. The story begins with the first settlers who came to the shores of North America in search of a better life. They found a land of vast resources and a people who were determined to build a new society. The story is one of struggle and triumph, of hardship and hope. It is a story that has inspired generations and will continue to do so for many years to come.

The story of the United States is a story of a people who have grown from a small colony of immigrants to a great nation. The story begins with the first settlers who came to the shores of North America in search of a better life. They found a land of vast resources and a people who were determined to build a new society. The story is one of struggle and triumph, of hardship and hope. It is a story that has inspired generations and will continue to do so for many years to come.

The story of the United States is a story of a people who have grown from a small colony of immigrants to a great nation. The story begins with the first settlers who came to the shores of North America in search of a better life. They found a land of vast resources and a people who were determined to build a new society. The story is one of struggle and triumph, of hardship and hope. It is a story that has inspired generations and will continue to do so for many years to come.

The story of the United States is a story of a people who have grown from a small colony of immigrants to a great nation. The story begins with the first settlers who came to the shores of North America in search of a better life. They found a land of vast resources and a people who were determined to build a new society. The story is one of struggle and triumph, of hardship and hope. It is a story that has inspired generations and will continue to do so for many years to come.

Brace Hayden, John North and Dennis Hemmer
January 4, 1980
Page 2

4. Good faith by the operator. Any mitigating actions by the operator to correct a problem or minimize its impacts shall be considered. Notification to the Department by the operator of a possible violation should be considered as an act of good faith.

The Chief Legal Counsel shall continue to keep an updated record by operator of the final penalties assessed and a brief description of the violations, including a brief factor-by-factor analysis.

Finally, it should be noted that the department will continue its policy of not issuing additional permits to permittees who have not paid outstanding penalty assessments.

jc

Main body of faint, illegible text, likely a list or a series of entries, occupying the upper half of the page.



PENALTIES ASSESSED FOR TYPICAL VIOLATION: 1977-1979

Category I No Previous Violation (Of Similar Type) No or Minimal Damage No or Minimal Negligence Good Faith Points	Contamination or Burying of Topsoil	Sedimentation Off Permit Areas or Inadequate Sedimentation Structure	Disturbance Off Permit Area (Non Sediment)	Failure to Reclaim in Timely Manner
Category II 1 or 2 Previous Violations (Of Similar Type) Low Damage Low Negligence Good Faith Points	\$200	(\$200)*	(\$200)	(\$200)
Category III 2 or 3 Previous Violations (Of Similar Type) Moderate Damage Moderate Negligence Good Faith Points	\$850	(\$500)	\$400 \$650 \$1,500	\$500 \$1,000
Category IV 4 or More Previous Violations (Of Similar Type) High Damage Gross Negligence or Willful Bad Faith	\$3,000 \$10,000	\$1,000 \$1,500	\$2,000	(\$1,000)
	(\$2,000)**	(\$2,000)**	(\$2,000)**	(\$2,000)**

*All penalties in parentheses are estimated minimums. Estimates are necessary because no violation of this category has occurred during the period:

**This \$2,000 figure is the maximum currently assessable for a violation of and days duration. Each additional day may result in an additional \$000 penalty. Upon OSM approval of Montana's permanent program, the maximum will be \$10,000 for the first day and \$5,000 for each day thereafter.

Montana Coal Production 1979

	Beartooth	Coal Creek	Decker Coal	East Decker	Divide	Knife River	West Energy	Westmoreland	PM	Peabody	Total
January		1,665	239,743	252,976	2,328	33,701	791,997	187,997	2,086	147,829	1,659,425
February		744	200,432	173,625	1,247	29,002	631,853	169,454	1,119	110,210	1,317,686
March		1,008	396,997	250,248	525	32,175	1,004,456	403,085	730	164,810	2,254,034
April		1,227	411,706	424,138	343	20,971	1,025,020	492,054	361	229,682	2,605,502
May		972	602,812	693,530	135	17,388	1,128,999	690,748	240	278,652	3,413,476
June		931	646,877	556,228	45	21,183	907,575	522,064	0	178,942	2,833,845
July		2,065	651,483	574,080	68	22,908	1,044,402	584,411	129	119,500	2,999,046
August	207	4,164	545,027	508,150	204	28,443	1,066,056	491,836	0	206,987	2,851,074
September	310	2,924	701,672	607,449	613	22,190	980,582	400,142	0	203,473	2,919,355
October	198	5,022	708,099	651,969	1,234	23,760	1,054,564	385,282	1,343	320,069	3,151,540
November	0	4,300	761,691	627,858	1,571	27,403	1,072,434	430,993	2,722	287,216	3,216,188
December	0	4,854	1,200,833	577,182	1,151	26,019	1,017,620	192,590	2,019	210,263	3,232,531
Totals	715	29,876	7,067,372	5,897,433	9,464	305,143	11,725,558	4,949,759	10,749	2,457,633	32,453,702

Source: Workers Compensation Division, Bureau of Safety & Health

Production this year shows upward trend

Figures from the Workers Compensation Division, Bureau of Safety and Health, indicates that Montana coal production during the first two months of 1980 increased by more than 1.5 million tons over January and February of the previous year.

Total production in January, 1980, was 2,484,027 tons, up by 1,166,341 tons from that month in 1979. February showed a lesser gain at 2,134,100 tons, which was 474,675 above the total for that month last year.

The largest single producer in January was Decker Coal Company which had a total monthly output of slightly over one million tons. Western Energy had the second largest production for that month with 876,465 tons.

In February, Western Energy took over the lead with 782,751 tons but Decker followed closely with 777,412. Westmoreland Resources was third with 318,000 tons in January and 361,800 in February.



SINCE 1908

COMMERCIAL TESTING & ENGINEERING CO.

SINCE 1908

The Leader in Complete Specialized
Coal Testing and Field Services For Over 71 Years



CHARTER MEMBER

COAL ANALYSIS • COAL SAMPLING
COAL INSPECTION • COAL AND COKE EVALUATION
CARBONIZATION TESTS • PHYSICAL TESTS
FUEL CONSULTANTS • COAL EXPLORATION
COAL CORE LOGGING & EVALUATION

Analytical Analysis Services

To The Mining and Environmental Industries

Air Pollution Surveys and Environmental Testing, Air, Water, Noise

Western Division Offices & Lab., 10775 E. 51st. Ave., Denver, CO 80239	(303) 373-4772
Billings, Montana Laboratory, 609 Charles St., Billings, MT 59102	(406) 252-5818
Palisade (Grand Junction), P.O. Box 956, Palisade, CO	(303) 464-5553
Helper, Utah Laboratory, 139 So. Main, Helper, UT 84526	(801) 472-3537
Instrumental Analysis Division, 490 Orchard St., Golden, CO 80401	(303) 278-9521

Executive Offices, 228 N. LaSalle Street, Chicago, IL 60601

43102

MONTANA
PERMANENT COAL PROGRAM
TEXT

SUBMITTED TO:

*Donald Crane
Regional Director
Region V
Office of Surface Mining
U.S. Department of the Interior
Old Post Office--downtown
1823 Stout Street, Room 270
Denver, Colorado 80202*

IN ACCORDANCE WITH:

30 CFR Part 731

BY

*The Montana Department of State Lands
Capitol Station
Helena, Montana 59601*

August 3, 1979

*Revised submission:
November 13, 1979*

STATE DOCUMENTS COLLECTION

OCT 14 1996

MONTANA STATE LIBRARY
1515 E. 6th AVE.
HELENA, MONTANA 59620

PLEASE RETURN

Table of Contents

	Page
List of Tables	i
List of Figures	ii
1. Montana laws and regulations for surface coal mining and for coal prospecting	1
2. Other state laws and regulations affecting coal prospecting and mining in Montana	2
3. Chief legal officer's opinion	3
4. Governor's letter designating state regulatory authority	6
5. Structural organization and coal program duties of the Montana Department of State Lands and the Department of Health and Environmental Sciences	9
6. Intra-agency agreement regarding Montana's coal program	16
7. Narrative description of Montana's proposed permanent program	21
a. Receipt, review, and decision on permit applications	21
b. Assessing fees for permit applications	23
c. Bonding procedures and liability insurance	24
d. Inspection and monitoring procedures	25
e. Enforcement procedures	26
f. Administration and enforcement of permanent program performance standards	27
g. Assessing and collecting civil penalties	28
h. Issuing public notices and holding public hearings	29
i. Coordination of permits with other agencies	31
j. Consultation with agencies having jurisdiction over fish, wildlife, historic, cultural and archaeological resources	31
k. Designation of lands unsuitable program	32
l. Restrictions against financial interests	42

Table of Contents (Cont'd)

	Page
m. Training, examination and certification of blasters.	42
n. Providing for public participation in the State program.	42
o. Administrative and judicial review of Department of State Lands actions	45
p. Small operator assistance program.	46
q. Portions of Montana's Permanent Program rules and regulations that apply to underground coal mines.	56a
r. Montana's use of Section 30 CFR 731.13 (state window).	56e
8. Statistical information on Montana's coal mining and prospecting operations	57
a. Coal tonnage	57
b. Number of mines and mine locations	57
c. Acreage for mine permits and prospecting permits	57
d. Geographic distribution of Montana coal mining and prospecting areas	60
e. Number of permits issued during the last 3 years	63
f. Frequency of DSL mine inspections during the interim program . .	63
g. Status of reclamation on surface coal mines and coal prospecting operations.	64
h. Proposed future coal production and future production areas. . .	64
9. Existing and proposed program staffing levels.	66
10. Description of staffing adequacy	67
11. Technical and professional personnel available from other agencies .	71
12. Budgetary summary for Montana's coal program	72
13. Physical resources available for use in Montana's coal program . . .	76
14. Other programs administered by the Department of State Lands	79

Appendices

- A - Existing and Proposed Coal Laws and Rules
- B - Other Laws and Regulations Relevant to Coal Mining
- C - Side by Side Comparison of the Federal Act and Rules with the Montana Act and Rules
- D - Department of State Lands Forms and Policy Memos
- E - Cooperative Agreement

List of Tables

<u>No.</u>		<u>Page</u>
1	Existing and proposed Montana State program staff	11
2	Montana coal mines, existing and proposed	59
3	Projected demand for Montana coal, 1980-2000.	65
4	Budgetary summary of Montana's coal program for FY 1979 through FY 1980.	73
5	Line-item summaries of Montana's coal program for FY 1979	74
6	Line-item summaries of Montana's coal program for FY 1980	75
6a	Estimated line-item summaries of Montana's coal program for FY 1981.	75b
6b	Estimated line-item summaries for Montana's coal program for FY 1982.	75c
7	Equipment owned by the Reclamation Division of the Department of State Lands.	77

LIST OF FIGURES

<u>No.</u>	<u>Page</u>
1. Table of organization for the Department of State Lands Permanent Program	10
2. Structural organization chart of the Department of Health and Environmental Sciences	13
3. Structural organization chart of the Environmental Sciences Division of the Department of Health & Environmental Sciences	14
4. Geographic distribution of Montana coal mining areas.	61

1. Montana laws and regulations for surface coal mining and for coal prospecting

Copies of the following existing statutes are contained in Appendix A of Montana's Permanent Program submittal:

The Montana Strip and Underground Mine Reclamation Act
(Part 2, Chapter 4, Title 82, MCA)

The Montana Strip and Underground Mine Siting Act
(Part 1, Chapter 4, Title 82, MCA)

The Montana Coal Conservation Act (Part 1, Chapter 3,
Title 82, MCA)

The Montana Department of State Lands' Rules and
Regulations adopted pursuant to the Montana Strip and
Underground Mine Reclamation Act (ARM, Title 26, Chapter
10, Subchapter 10)

The Montana Department of State Lands' Rules and
Regulations adopted pursuant to the Montana Strip and
Underground Mine Siting Act (ARM, Title 26, Chapter 10,
Subchapter 18)

The Montana Department of State Lands' Rules and Regulations
adopted pursuant to the Montana Coal Conservation Act
(ARM, Title 26, Chapter 10, Subchapter 14)

The 1979 Montana Legislature passed three bills amending the Montana Strip and Underground Mine Reclamation Act (see Section 3). These three bills include the following and may also be found in Appendix A.

House Bill 739 (Chapter 196, Laws of 1979)

House Bill 406 (Chapter 172, Laws of 1979)

Senate Bill 515 (Chapter 550, Laws of 1979)

The first two of these laws became effective on July 1, 1979. Chapter 550 becomes effective upon OSM's approval of Montana's permanent regulatory program. The Montana Coal Conservation Act was made part of the Montana Strip and Underground Mine Reclamation Act as a result of the passage of Chapter 550.

Lastly, on July 16, 1979, the Montana Department of State Lands adopted new rules pursuant to the Montana Strip and Underground Mine Reclamation Act and Chapter 550. These may also be found in Appendix A. With the exception of Rules XVI and XXI which will become effective in the near future (as soon as they are published) these rules will become effective at the same time as Chapter 550.

2. Other state laws and regulations affecting coal prospecting and mining in Montana (30 CFR 731.14(b))

Other state laws and regulations directly affecting the regulation of coal exploration and surface coal mining and reclamation operations in Montana are listed below:

Article II of the Montana Constitution

Section 9 - Right to Know

Section 11 - Disposition of Public Trust Land

Section 1-1-204 MCA - General provisions for use of Montana Codes. Terms denoting state of mind.

Section 1-1-302 MCA - General laws and definitions of Montana Codes. Computation of time.

Title 27, Chapter 19, Part 3 MCA - Provisions for injunctions.

Section 76-1-113 MCA - Preventing a planning board from zoning against mining.

Section 76-2-209 MCA - Preventing County Commissioners from zoning against mining.

Section 77-2-313 MCA - Designating certain state lands subject to taxation.

Section 77-2-231 MCA - Allowing the sale of state lands.

Section 45-12-312 MCA - Accountability for conduct of a corporation.

Title 82, Chapter 4, Part 4 MCA - Montana Opencut Mining Act.

Title 82, Chapter 4, Part 3 MCA - Montana Hard Rock Mining Act.

Title 2, Chapter 15, Part 32 MCA - Formation of the Department of State Lands.

Title 75, Chapter 2 MCA - The Clean Air Act of Montana.

Title 75, Chapter 5 MCA - The Montana Water Quality Act.

Title 2, Chapter 4, Part 6 MCA - Contested cases.

Title 2, Chapter 4, Part 7 MCA - Judicial review.

ARM Title 16, Chapter 14, Subchapter 10 - The Montana Department of Health and Environmental Sciences rules adopted pursuant to the Montana Water Quality Act.

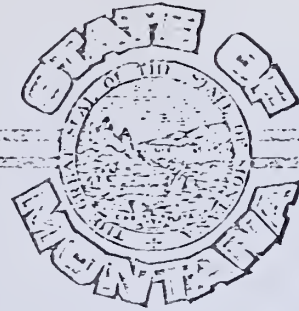
ARM Title 16, Chapter 14, Subchapter 1 - The Montana Department of Health and Environmental Sciences rules adopted pursuant to the Clean Air Act of Montana.

Copies of each of these laws and regulations may be found in Appendix B of this ~~is~~ ^{is} of permanent program submittal.

3. Chief legal officer's opinion [30 CFR 731.14(c)]

On the following page is a copy of the Department of State Lands' chief legal officers opinion indicating that Montana has or will have the authority to implement, administer and enforce a permanent coal program in compliance with P.L. 95-87 and 30 CFR Chapter VII. Included by reference as a part of this opinion is a section by section comparison of Montana's coal reclamation laws and rules, as amended, with P.L. 95-87 and 30 CFR Chapter VII. This section by section comparison is found in Appendix C.

DEPARTMENT OF STATE LANDS



CAPITOL STATION, HELENA, MT 59601

THOMAS L. JUDGE, GOVERNOR

(405) 443-2074

LEO BERRY, COMMISSIONER

July 30, 1979

Mr. Donald Crane
Director, Region V
Office of Surface Mining
Dept. of the Interior
Old Post Office--downtown
1823 Stout Street, Rm. 270
Denver, Colorado 80202

Dear Mr. Crane:

Thirty C.F.R. 731.14(c) requires that a state permanent program submission contain an opinion of the state attorney general or the regulatory authority's chief legal officer indicating that the state has or will have authority to implement, administer, and enforce a program in compliance with P.L. 95-87 and 30 C.F.R, Chapter VII. As chief legal officer for the Department of State Lands, I am submitting this opinion to fulfill that requirement. By this reference Appendix C of the Montana Permanent Program submittal is incorporated herein.

As you are aware, Montana's basic coal mine regulatory statute is the Montana Strip and Underground Mine Reclamation Act, which is contained in Part 2, Chapter 4, Title 82, Montana Code Annotated (M.C.A.). The 1979 Montana Legislature passed three bills amending that act. In H.B. 739 (Chapter 196, Laws of 1979), it made certain housekeeping changes. In H.B. 406 (Chapter 172, Laws of 1979), it allowed for alternate revegetation. In S.B. 515 (Chapter 550, Laws of 1979), it revised the act to comply with Public Law 95-87. The first two of these laws became effective on July 1, 1979. Chapter 550 becomes effective upon OSM's approval of Montana's permanent regulatory program. Therefore, the comparison of the Montana statute to the federal statute, which is contained in Appendix C, references the act as amended by those three laws. The comparison demonstrates that, upon federal approval of its program, Montana under its law will have the same or more extensive authority than the Office of Surface Mining under Public Law 95-87.

Also included in Appendix C is a comparison of the state law and rules to the federal rules. The state rules referenced to were adopted on July 16, 1979. With the exception of Rules XVI and XXI, which will become effective in the near future, these rules become effective at the same time as Chapter 550. As demonstrated in the comparison, the state rules, along with certain portions of the Montana act which have not been repeated in the rules, provide a regulatory scheme consistent with the federal regulations.

Therefore, it is my opinion that, pursuant to the Montana Strip and Underground Mine Reclamation Act as amended by the 1979 Montana Legislature, and Rules I through XXXI contained in Appendix C, the Department of State Lands will, upon approval of Montana's permanent regulatory program by the Office of Surface Mining, have authority to implement, administer, and enforce a program and to regulate coal exploration and surface coal mining and reclamation operations in accordance with Public Law 95-87 and consistent with 30 C.F.R., Chapter VII.

Sincerely,



John F. North, Chief
Legal Counsel
Department of State Lands

lw

4. Governor's letter designating state regulatory authority
[30 CFR 731.14(d)]

On the following page is a copy of a letter from the Governor of Montana to the Director of OSM designating the Montana Department of State Lands as the state regulatory authority for Montana and authorizing the Department to receive and administer grants under 30 CFR 725 and 30 CFR 740.

State of Montana
Office of The Governor
Helena 59601

February 23, 1978

THOMAS L. JUDGE
GOVERNOR

Mr. Walter N. Heine, Director
Office of Surface Mining
Department of Interior
Room 7348
Washington, D.C. 20204

Dear Mr. Heine,

On January 20, 1978, I designated the Montana Department of State Lands as the state agency to enforce the Initial Regulatory Period performance standards of the Surface Mining Control and Reclamation Act of 1977. As required by this Act and the Department of Interior rules adopted pursuant to the Act, I appoint the Department of State Lands to be the state agency to:

1. Submit grant applications, and to receive and administer grants as described in Part 725 of the Initial Regulatory Period Rules. Part 725 concerns reimbursement to the states for the costs of enforcing the initial performance standards.
2. Submit grant applications and to receive and administer grants as described in Part 740 of the Initial Regulatory Period Rules. Part 740 concerns grants to states to:
 - (a) Develop state programs for the regulation and control of surface coal mining and reclamation operation;
 - (b) Administer and enforce State programs for the regulation and control of surface coal mining and reclamation operations; and
 - (c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

In designating the Montana Department of State Lands as the administering agency, it must be understood that the Department of Health and Environmental Sciences and possibly other state agencies will be consulted and reimbursed for their part in enforcing the Surface Mining Control and Reclamation Act in Montana.

Leo Berry, Jr., the Commissioner of the Department of State Lands, is Montana's point of contact regarding grants and all other provisions of this Act.

Sincerely,

THOMAS L. JUDGE
Governor

5. Structural organization and coal program duties of the Montana Department of State Lands and Department of Health and Environmental Sciences

A structural organization chart indicating the lines of authority within the Department of State Lands is shown in Figure I. Authority generally flows from staff members to Bureau Chief to Division Administrator to the Commissioner. A listing of departmental positions involved with Montana's coal program and their duties are shown in Table 1.

The State Board of Land Commissioners (Board) consists of the Governor, the Attorney General, Superintendent of Public Instruction, State Auditor and Secretary of State. The Department of State Lands (DSL) acts under the direction of the Board and administers the laws charged to the Board. The State Lands' Commissioner is the Chief Administrative Officer of the Department. The Board of Land Commissioners delegated all of its permitting and enforcement authority with regards to Montana's mined land reclamation statutes to the Commissioner of State Lands. The Commissioner is appointed by and serves at the pleasure of the Governor.

DSL has two primary duties; one is the management of state-owned lands, the second is administration of state and federal mined land reclamation statutes. In accordance with such duties, the Department is organized into a Land Administration Division, a Reclamation Division and a Centralized Services Division. The Department of State Lands was appointed by the Governor as the state regulatory authority to implement P.L. 95-87 (see Section 4).

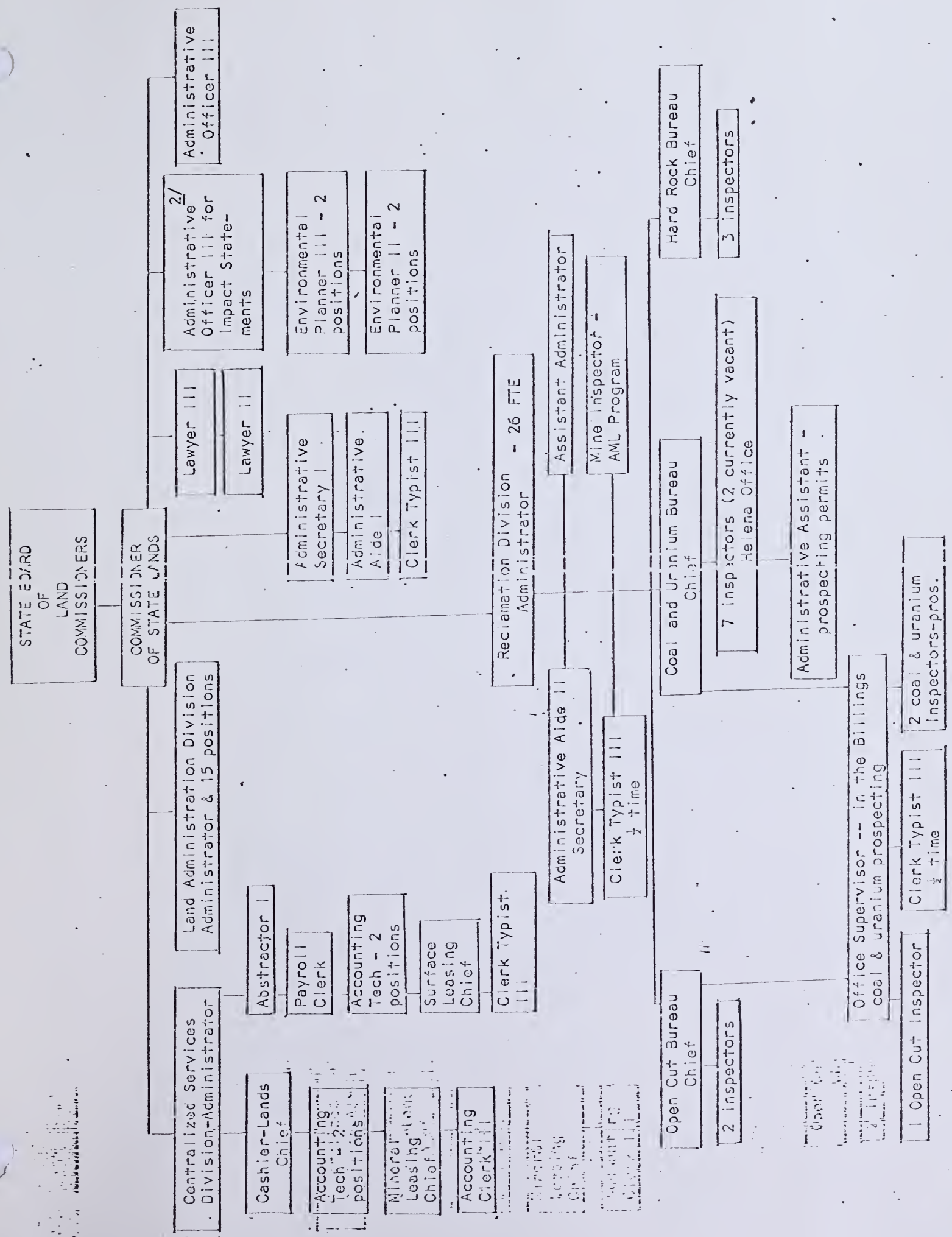
DSL's Land Administration Division oversees the leasing, sale, exchange, improvements, and overall management of state-owned lands.

DSL's Centralized Services Division handles the processing of lease and royalty payments on state lands. It is also responsible for such Departmental business as accounting, budgeting, and the processing of employee pay and benefits. The Centralized Services Division administers OSM grant monies for the Reclamation Division and assists the Reclamation Division in budgeting.

The Reclamation Division of DSL administers Montana's mined land reclamation statutes including the Montana Strip and Underground Mine Reclamation Act (coal and uranium), the Montana Strip and Underground Mine Siting Act (coal and uranium), the Montana Opencut Mining Act (sand, gravel, scoria, bentonite, clay and phosphate) and the Montana Hard Rock Mining Act. Copies of Montana's coal reclamation statutes are included in Appendix A.

In addition to the three divisions, the Commissioner of State Lands Department has a special staff that currently includes an administrative officer III, an administrative officer in charge of environmental assessments, 4 environmental planners, two attorneys, an administrative secretary, administrative aide, and a clerk typist. Members of the Commissioner's staff involved with Montana's coal reclamation program and their duties are shown on Table 1. as Table 1.

Figure 1 - Table of organization - Department of State Lands - Permanent Program



1/ All positions are filled as of August 3, 1979 except where vacancies are noted.

2/ Administratively part of Commissioners staff but paid Reclamation Division funding

Classification	Minimum Education and Experience	Functions in Coal Bureau	Inspection and Enforcement	Time		Other
				Coal Mine Permit Evaluation	Uranium Permit or Other Coal Duties	
COMMISSIONER'S STAFF						
Commissioner, DSL	Appointed by Governor	Chief executive officer of Dept., signs all permits				
Lawyer III	Law Degree	Chief legal counsel, statute and rule drafting, violations and public notices	.05			
Admin. Officer III	B.S. in nat. res. field & 2 yrs. experience	Admin. environmental assessment program				
RECLAMATION DIVISION						
Admin., Reclamation Division	B.S. in nat. res. field & 3 yrs. experience	Admin. coal program, reclamation to Commissioner, OSM liaison				
Asst. Admin., Reclamation Div.	B.S. in nat. res. field & 3 yrs. experience	Designation of lands unsuitable program, wildlife biologist	.10	.20	.70	OSM funded - IRP grant
Admin. Aide II	High School educ. & 2 yrs. exper.	Administrative secretary				
Clerk Typist III (1/2 time)	High School educ. & typing skill	Clerk typist in Helena office				OSM funded - IRP grant
Clerk Typist III (1/2 time)	High School educ. & typing skill	Clerk typist in Billings office				OSM funded - IRP grant
Chief, Coal & Uranium Bureau	B.S. in nat. res. field & 3 yrs. experience	Coordinates permit review & inspections, OSM liaison, rule drafting	.10	.50	.40	
Mine Recl. Inspector V, Coal & Uranium Bureau	Engineering degree and 1 year exper.	Mine engineer	.20	.80		
Mine Recl. Inspector IV, Coal & Uranium Bureau	B.S. in nat. res. field & 3 yrs. experience	Office supervisor - Billings office	.40	.40	.20	
Mine Recl. Inspector IV, Coal & Uranium Bureau	B.S. in nat. res. field & 3 yrs. experience	Soil scientist	.20	.70	.10	
Mine Recl. Inspector IV, Coal & Uranium Bureau	B.S. in nat. res. field & 3 yrs. experience	Admin. abandoned mine land reclamation program				OSM funded - AML grant
Mine Recl. Inspector IV, Coal & Uranium Bureau	B.S. in nat. res. field & 3 yrs. experience	Admin. coal operator assistance program (SOAP)				Vacant to be funded by OSM SOAP grant
Mine Recl. Inspector III, Coal & Uranium Bureau	B.S. in nat. res. field & 2 yrs. experience	Hydrogeologist	.25	.65	.10	
Mine Recl. Inspector III, Coal & Uranium Bureau	B.S. in nat. res. field & 2 yrs. experience	Hydrogeologist	.25	.65	.10	
Mine Recl. Inspector III, Coal & Uranium Bureau	B.S. in nat. res. field & 2 yrs. experience	Plant ecologist	.25	.75		OSM funded - IRP Grant
Mine Recl. Inspector II, Coal & Uranium Bureau	B.S. in nat. res. field & 1 yr. experience	Range scientist	.50		.50	
Mine Recl. Inspector II, Coal & Uranium Bureau	B.S. in nat. res. field & 1 yr. experience	Plumbing specialist	.25	.75		Vacant - to be funded by OSM in Dec., 1979
Mine Recl. Inspector I, Coal & Uranium Bureau	B.S. in nat. res. field	Geologist	.40		.60	
Mine Recl. Inspector I, Coal & Uranium Bureau	B.S. in nat. res. field	Either wildlife biologist or plant ecologist	.25	.75		Vacant - to be funded by OSM in Dec., 1979
Administrative Asst. Coal & Uranium Bur.	B.A. or B.S. degree	Permit analyst, prospecting coordinator	.20		.80	
GENERALIZED SERVICES DIVISION						
Accountant II	B.A. in accounting	Accountant				
Payroll Clerk I	H.S. educ. & 2 yrs. experience	Payroll clerk				
Accounting Tech I	H.S. education	Processing travel claims & paying bills				
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES						
Quality Bureau						
Sanitary Engineer	Engineering degree & 1 year experience	Air quality specialist, permit review, inspections	.40	.60		Vacant to be funded by OSM in Dec., 1979
TOTALS			3.90 FTE	6.75 FTE	3.5 FTE	

The Reclamation Division has administered the initial regulatory program of P.L. 95-87 since February 3, 1978, and it is responsible for developing and administering the permanent regulatory program. The Reclamation Division is also responsible for carrying out the provisions of a Cooperative Agreement with the Department of Interior to regulate surface coal mining operations on Federal lands. This agreement was signed by the Governor of Montana, the Commissioner of State Lands and the Secretary of Interior on October 18, 1978. Lastly, the Reclamation Division is responsible for developing and administering Montana's Abandoned Mine Land Reclamation Program (AML).

Structural organization charts indicating the lines of authority for the Department of Health and Environmental Sciences (DHES) and of the Environmental Sciences Division of DHES are shown on Figures 2 and 3. A copy of an interagency agreement between DHES and DSL with regards to the administration of Montana's coal program is included in Section 6.

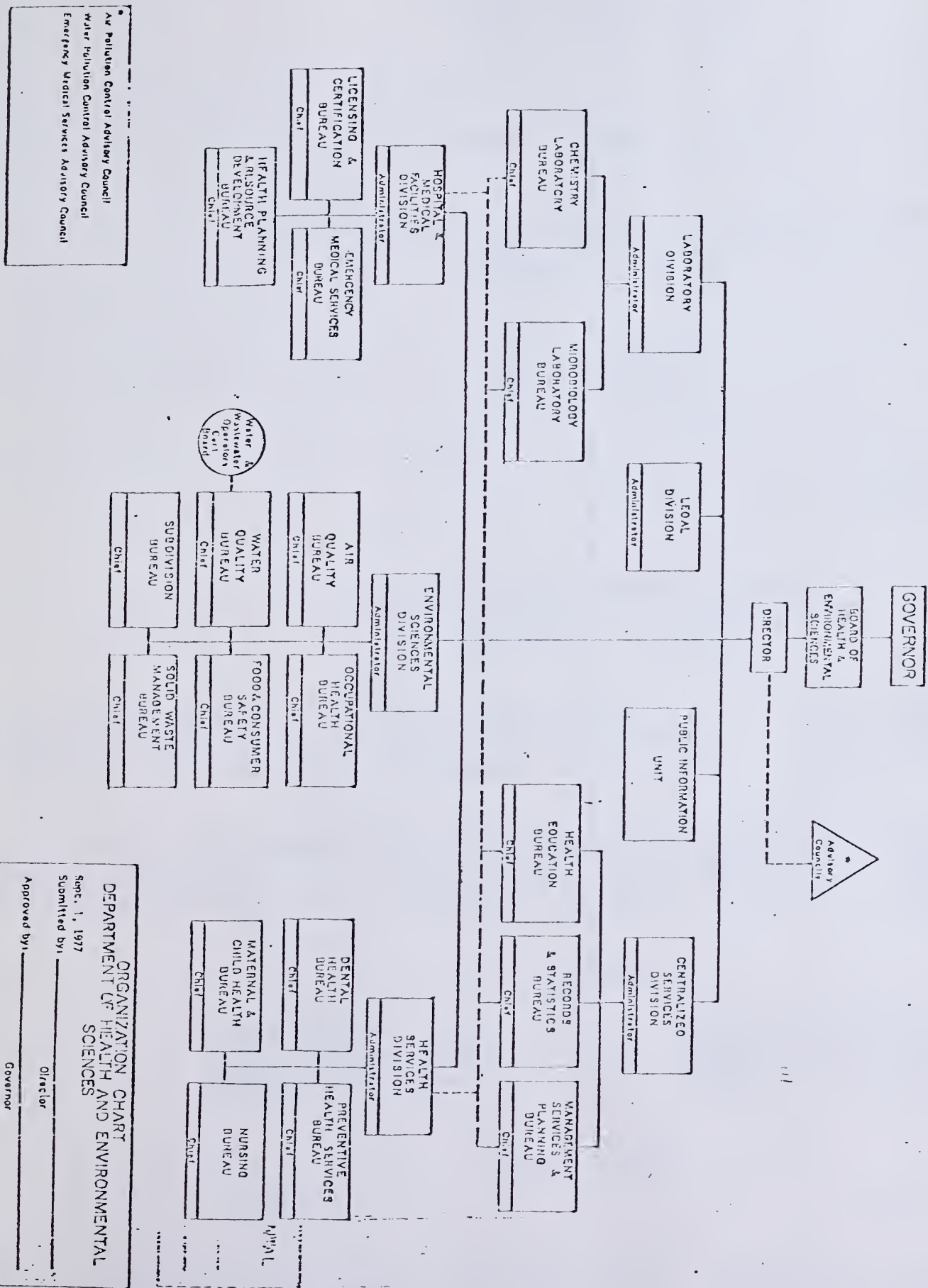
The Department of Health and Environmental Sciences (DHES) has a small, but important role to play in the administration of Montana's coal program. The Department of State Lands (DSL) depends upon the DHES Laboratory Division to analyze water quality samples collected from drainageways, sediment ponds and other areas on or adjacent to coal mines. DSL inspectors have been trained in the proper techniques for collecting and preserving water samples so that it is not necessary for a DHES inspector to be present at the mine site in order for a water quality sample to be collected. Water quality samples are reported back to DSL's Reclamation Division which then takes appropriate action under the Montana Strip and Underground Mine Reclamation Act. No changes are expected in this process when the permanent program goes into effect. The Laboratory Division is the only part of DHES that now has a direct role to play in the administration of Montana's coal program.

The Water Quality and Air Quality Bureau of the Environmental Sciences Division of DHES have duties independent of the Department of State Lands, with regards to enforcing environmental standards at Montana's coal mines.

The Water Quality Bureau of DHES enforces the Montana Water Quality Act (see Appendix B) and pursuant rules by issuing Montana Pollutant Discharges Elimination System (MPDES) permits for coal mine discharges. Coal companies are required to self monitor in accordance with their MPDES permits. In addition, Water Quality Bureau inspectors periodically spot check mine discharges for MPDES permit compliance. Copies of all water quality sampling results pursuant to an MPDES permit are sent to both DHES and the Department of State Lands by the coal company. As previously stated, each agency takes separate enforcement action with regards to water quality noncompliances.

The Water Quality Bureau of DHES has a Permits and Enforcement Section which handles surveillance through inspections and wastewater monitoring, wastewater discharge permits to surface waters, and enforcement coordination. The permits section is headed by a sanitary engineer and he has a chemist who works on enforcement coordination, a chemist, a biologist who assists on permit issuance and a biologist who does the monitoring and inspections. Support is provided by the Bureau water resources engineer experienced in hydrogeology, an EPA environmental engineer, and the Legal and Chemistry Divisions of DHES.

Figure 2 - Structural organization chart of the Department of Health and Environmental Science



ORGANIZATION CHART
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Sept. 1, 1977

Submitted by _____

Approved by _____

Director

Governor



Figure 3-- Montana Department of Health and Environmental Sciences

ENVIRONMENTAL SCIENCES DIVISION
 Board of Health Building
 Helena, Montana 59601

Thomas L. Judge, Governor

Montana Department of Health and Environmental Sciences
 Arthur C. Knight, F.C.C.P., M.D., Director
 Telephone: 449-2544

John W. Bartlett
 Deputy Director
 Telephone: 449-2544

Legal Division
 Telephone: 449-2630

ENVIRONMENTAL SCIENCES DIVISION
 Donald G. Willens, P.E., Administrator
 Telephone: 449-3946

Water Quality Bureau
 Steven L. Pilcher, Chief
 Telephone: 449-2406

Air Quality Bureau
 Mike Roach, P.E., Chief
 Telephone: 449-3454

Food & Consumer Safety Bureau
 Vern Sloulin, R.S., Chief
 Telephone: 449-2408

Occupational Health Bureau
 Larry L. Lloyd, Chief
 Telephone: 449-3671

Solid Waste Management Bureau
 Duane Robertson, R.S., Chief
 Telephone: 449-2821

Subdivision Bureau
 Ed Casne, P.E., Chief
 Telephone: 449-3946

Sections:

Fiscal Control
 Dennis Thurston, Head
 Telephone: 449-3454

Environmental Impact Statements
 Thomas Ellerhoff, Head
 Telephone: 449-3946

Branch Offices:

Kalispell

Billings

Wilbur Aikin, P.E., Water Quality & Air Quality
 Branch Office Manager/Office Manager
 3 Sunset Plaza
 Kalispell, Montana 59901
 Telephone: 755-5521

Harry Keltz, P.E., Air Quality & Air
 Branch Office Manager/Office Manager
 3304 Second Avenue North
 Billings, Montana 59101
 Telephone: 252-5697

Stan Strom, Subdivision
 Telephone: 755-5521

Frank Cessaman, R.S., Food, R.S.,
 Telephone: 252-5697



The Air Quality Bureau of DHES enforces the Montana Clean Air Act and regulations adopted pursuant to this Act (for copies see Appendix B). In addition, the Air Quality Bureau has submitted a state implementation plan to the E.P.A. for approval pursuant to the Federal Clean Air Act.

The Air Quality Bureau of DHES has an Engineering Section which includes four sanitary engineers and a planner. Their primary responsibility is to assess new source permit applications, develop and implement a comprehensive plan for air pollution control and review variance requests. Their Monitoring and Enforcement Section includes six environmental specialists and two equipment repair specialists. The environmental specialists have varied professional backgrounds in the physical and biological sciences. Technical assistance is also provided by a meteorologist and a statistical technician. Support is also provided by the Legal and Chemistry Divisions of DHES. One additional position, an air quality specialist, would be added to the DHES staff for the administration of the permanent program. A description of the duties of this position may be found in Section 9.

The Environmental Sciences Division of DHES has a field office in Billings staffed by engineers, a chemist and a biologist. These individuals do most of the DHES field work in eastern Montana.

6. Intragency agreement regarding Montana's coal program
[30 CFR 731.14(f)]

On the following page is a copy of a letter from the Commissioner of the Montana Department of State Lands to the Deputy Director of the Montana Department of Health and Environmental Sciences (DHES) describing the role that the DHES plays in the administration of Montana's coal program.



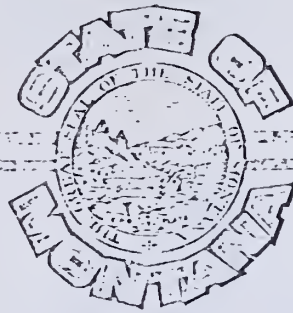
DEPARTMENT OF STATE LANDS

CAPITOL STATION, HELENA, MT 59601

THOMAS L. JUDGE, GOVERNOR

(406) 449-2074

LEO BERRY, COMMISSIONER



July 27, 1979

Mr. John W. Bartlett
Deputy Director
Montana Department of
Health & Environmental Sciences
Cogswell Building
Capitol Station
Helena, Montana 59601

Dear John;

For several years, the Department of State Lands has brought water quality samples collected from mine areas to the Department of Health's Laboratory Division to be analyzed. Results are reported to this agency which then takes appropriate action under Montana mined land reclamation statutes should a violation of a statute have occurred. Both Montana's Cooperative Agreement with the Department of the Interior for the regulation of coal mine reclamation on Federal Lands and our proposed permanent regulatory program for the administration of the Federal Strip Mining Act require that Montana has adequate laboratory facilities to analyze water quality samples. Accordingly, I wish to affirm that our working relationship with Health's Laboratory Division will continue.

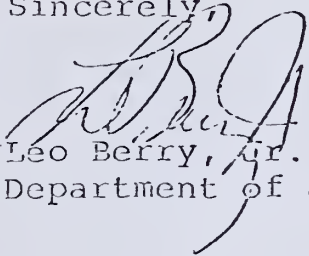
A related matter is that pursuant to our proposed permanent coal program, this Department will apply for funding from the Department of Interior for an air quality specialist. Such a specialist is required as a result of changes in the Montana Strip and Underground Mine Reclamation Act approved by the 1979 legislature and prompted by Montana's desire to retain state control over the regulation of coal mine reclamation in this state. The specialist's duties would include review of air quality control measures and air quality monitoring at each of Montana's coal mines. For the sake of government efficiency, we would like to have the air quality specialist hired by your agency (providing an FTE is available) and assigned to the Department of State Lands. We would be able to provide office space for such an individual.

It is understood, that the Department of Health and Environmental Sciences will continue to enforce all state air and water quality statutes as they apply to coal strip mining.



If you concur with the statement in this letter, please sign on the line below and thanks for your assistance in helping this agency administer Montana's mined land reclamation statutes.

Sincerely,


Leo Berry, Jr., Commissioner
Department of State Lands



John Bartlett, Deputy Director
Department of Health & Environmental
Sciences

8/3/79
Date

BH:lw

c: Brace Hayden





Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A. C. Knight, M.D., F.C.C.P.
Director

August 3, 1979

Leo Berry, Jr.
Commissioner
Department of State Lands
Capitol Station
Helena, MT 59601

RE: Federal Strip Mining Act

Dear Leo:

I have reviewed your request for continued laboratory support and the use of an air specialist with various individuals and bureaus within the Department of Health. The cooperative agreement whereby Health's laboratory division analyzes water quality samples for the Department of State Lands can continue as it has. Our laboratory has the capability to meet most requirements for the analysis of water quality samples.

Your request to fund an air quality specialist to be hired by the Department of Health has been reviewed by the Air Quality Bureau. It is our understanding that the individual for this proposed position would be hired by the Department of Health and funded and housed by the Department of State Lands. The position would receive general direction, guidance and training from the Air Quality Bureau, but day to day direction would be administered by State Lands. Ultimately, however, the enforcement of any air quality regulation or standards would be through the Air Quality Bureau under authority delegated by the State and Federal Clean Air Acts and that the individual would act as the agent for the Bureau in this regard.

We believe that the individual should be an engineer, the minimum starting level of a grade 15. The position would be responsible for the review of air quality control and monitoring needs under the Federal Strip Mining Act and also implement the permit requirements of the Montana Clean Air Act on coal mines. We agree with you that this provides an efficient and integrated approach in meeting both of our responsibilities.

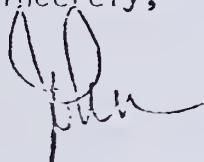
If our understanding of the needs and requirements are mutual, we will utilize the modified FTE that has been agreed upon with the Office of Budget and Program Planning.



Leo Berry, Jr.
August 3, 1979
Page 2

I have attempted to clarify my understanding of your letter of July 27, 1979, to me. If my understanding is correct as outlined in this letter, then I concur with your statements and the Department of Health will provide support to the Department of State Lands in the analysis of water quality samples and the employment of an air quality engineer.

Sincerely,



John W. Bartlett
Deputy Director

pmd



7. Narrative description of Montana's proposed permanent program (30 CFR 731.14(g))

Program areas discussed in this section follow 30 CFR 731.14(g)(1) through 30 CFR 731.14(g)(16). The section is referenced to applicable portions of the Montana Strip and Underground Mine Reclamation Act and the Department's permanent program rules. When referencing a portion of the Montana Act amended by Senate Bill 515, "SB 515" is placed in parenthesis after the reference. Copies of all State laws and rules referenced in this section are found in Appendix A.

Should the reader wish to find a cross reference to corresponding portions of P.L. 95-87 or 30 CFR, Chapter VII, these may be found by checking Appendix C.

a. Receipt, review and decision on permit applications

1. Coal exploration

All coal prospecting activities in Montana must be permitted, regardless of the amount of coal removed (82-4-226 MCA). Prospecting is defined in 82-4-203 MCA. A prospecting application must be submitted in accordance with 82-4-226(2) and Rule XIX. A fee of \$100 must be submitted with each application. After an application is received, the proposed area is inspected and the application is reviewed by a departmental staff member to ensure compliance with 82-4-226 MCA and Rule XIX. Where problem situations are anticipated, the application is also reviewed for compliance with the Act and Rules by other appropriate members of DSL's technical staff. As a result of the application review and the on-site inspection, the department has the following options:

1. Approve the permit
2. Deny the permit
3. Deny selected portions of the permit

If selected drill hole sites are unacceptable because they do not meet the criteria in the Act or the Rules, the applicant is usually allowed to relocate the holes in a more acceptable location.

An environmental assessment is written for each prospecting permit application. This is an in-house decision-making document. Prior to permit issuance, each drill hole must also be bonded according to a progressive bonding schedule (see Section 7c). Prospecting permit areas are inspected at irregular intervals to ensure compliance with Montana's Act and Rules. DSL's primary concern during such inspections is to ensure that the holes have been plugged, regraded and properly reseeded.

During the permit period, a permittee must submit monthly reports as outlined in Rule XIX(3)(a) and an annual report as outlined in Rule XXI. A prospecting permit is issued for one year and may be renewed.



If the permittee wishes to renew a prospecting permit, renewal must be requested at least 30 days but not more than 60 days prior to the expiration date. A renewal request must include the requirements outlined in Rule XIX (4). An environmental assessment is also prepared for prospecting permit renewals; however, no permit fee is required.

A prospecting permit may be amended to increase the number of holes on a permit or for hole relocation. A request for an amendment must contain the same information as the original application. Review procedures for an amendment are the same as those for the original permit.

Applications to prospect for more than 250 tons will be handled in the same manner as an application for a strip or underground mine operation: Review, renewal, revision and amendment procedures for such applications are outlined in Rule III and are the same as for a mining permit.

2. Coal mining

Applications for strip or underground mining operations must be submitted in accordance with 82-4-222 MCA and Rule II. "Operation" is defined in 82-4-203 MCA (SB 515). A fee of \$50 must be submitted with each permit application. Applications are reviewed by the department's technical staff as outlined in Rule III (1)(e). Permit applications are reviewed simultaneously for completeness and acceptability, and each professional on the technical staff (see Table 1) reviews that portion of an application within his or her expertise. Applications are "complete" when all the permit application information required by Montana's law and pursuant rules and regulations have been submitted to the department. All data must be of such quality and quantity that further information is not required in order to make a permit decision.

Where a permit application proposes the mining of federal lands, review is conducted pursuant to Montana's existing cooperative agreement with the Department of Interior and the appended Protocol Agreement (See 30 CFR 211 in Appendix E). This cooperative agreement will be modified pursuant to Section 523(c) of P.L. 95-87 after approval of Montana's permanent regulatory program.

Applications involving federal coal are currently reviewed jointly with OSM and OSM's comments on an application are included in the final deficiency letter which DSL sends to an applicant. If the application does not contain federal coal, the department's deficiency letter is sent directly to the applicant. OSM receives a copy of all coal permits issued by DSL. All deficiency letters are sent to an applicant by certified mail.

When deficient or unacceptable portions of an application must be revised, revisions must be submitted in the form of replacement pages to the original application, with the date of revision indicated. Revised applications are reviewed in the same fashion as original applications.

After an application is found to be complete, a decision must be made within 240 days (82-4-231 MCA). The department must either approve or deny an application as outlined in 82-4-231(2) MCA (SB 515) and Rule III(2)(e). Permit fees and selective denial criteria are found in 82-4-227 MCA (SB 515). Permits are issued for 5-year periods and may be renewed.



During the term of a permit, the permit is periodically reviewed in accordance with Rule III(2). Such reviews are conducted by DSL's technical staff.

An operator may apply to add or delete acreage to an approved permit as outlined in 82-4-225 MCA (SB 515) and Rule III(5). The review procedures for an application to add acreage are the same as those for the initial application.

Permit revisions fall into two categories: major and minor. Major revisions are defined in Rule I(37) and are subject to all the provisions of Rule III(1). Major revisions are reviewed by those individuals on the technical staff whose areas of expertise are involved in the revision. A minor revision is reviewed by the person or persons whose professional expertise is involved, or by the bureau chief if the revision is purely administrative.

Permit renewals are made in accordance with 82-4-221 MCA and Rule III(4) and must be submitted between 30 and 60 days of the permit anniversary date. Renewals are reviewed by the entire technical staff.

Bonding requirements for coal permits are described in Section 7c.

The Department of State Lands prepares environmental impact statements on all coal mine permit decisions that constitute a major action of State government that would have a significant effect on the quality of the human environment. Impact statements are prepared in accordance with Chapter 1, Title 75, MCA. An in-house preliminary environmental review is often prepared to determine whether or not an environmental impact statement is necessary. Impact statements for mine proposals involving federal lands are often prepared jointly with the Department of Interior.

Departmental inspection and monitoring procedures for coal mines are described in Section 7d.

b. Assessing fees for permit applications

An applicant for a coal prospecting permit must submit a \$100 application fee pursuant to 82-4-226 MCA. This fee may be used as a credit towards a mining permit if the area covered by the prospecting permit becomes covered by a valid surface or underground mining permit obtained before or at the time the prospecting permit expires. No fees are required for prospecting permit renewals or permit amendments.

An applicant for a coal mining permit must submit a \$50.00 application fee pursuant to 82-4-223 MCA. No fees are required for either minor permit revisions or for permit renewals; however, a \$50 fee is required for major revisions (see 82-4-221; S.B. 515) and permit amendments (see 82-4-225; S.B. 515), S.B. 515).

c. Bonding procedures and liability insurance

1. Bonding procedures

Montana's coal program bonding and bond release procedures are clearly described in Sections 82-4-223, and 82-4-235, MCA (S.B. 515) and Section 82-4-240 MCA. Rule XX of the permanent program rules expands upon the procedures authorized by these Sections of the Act.

To ensure that the conditions of a coal prospecting or mining permit are carried out, a performance bond must be filed with the permit application for an amount based on the characteristics of the area to be mined (82-4-223, S.B. 515) MCA). Bonding rates are determined by DSL and bonds are filed with DSL. A performance bond may be neither less than \$200 nor more than \$10,000 provided that such an amount is not less than the amount required for the state to undertake the work described in the reclamation plan. Because of this provision, performance bonds for some mine areas have been as high as \$16,000 per acre with the average being about \$4,000 per acre. DSL has established 3 separate levels for bonding different coal mine areas: mining; facilities and associated disturbance.

For a prospecting permit application, bonds are set on a "dollars per hole basis". The general departmental guidelines for drill hole bonding is as follows:

\$2,500 for first hole;
\$1,000/hole for next 4 holes;
\$500/hole for next 10 holes; and
\$100/hole for all holes thereafter.

When mud pit excavations are necessary, an extra bond of \$100 is set for each excavation. General procedures for the determination of bond amounts are given in paragraph 2 of Rule XX.

DSL may accept a collateral bond, certificate of deposit, or letter of credit in place of a surety bond. Restrictions on each of these are described in Rule XX. Appendix D of this submittal contains a copy of DSL's performance bond form.

Return of a bond is contingent on the mine operator's faithful performance in meeting the reclamation requirements of Part 2, Chapter 4, Title 82 MCA. A procedure for partial bond release is described in permanent program Rule XX, paragraph 11; however in no case, may a performance bond be totally released sooner than 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work on the reclamation area (82-4-235, S.B. 515). Rule XX also describes procedures used for hearings on bond release applications and procedures for bond forfeiture. Prospecting bond release procedures are the same as those described for coal mines.

2. Liability insurance

Liability insurance requirements are described in 82-4-222(5) MCA (S.B. 515) and in permanent program Rule XX, paragraph (14). Section 82-4-222(5) MCA (S.B. 515) requires that all coal operators carry a public liability insurance policy and Rule XX(14) sets the minimum coverage limits for such a policy.

d. Inspection and monitoring procedures

Sections 82-4-204, 82-4-221(2), 82-4-231(2) MCA (S.B. 515) describe DSL procedures for coal mine inspections. Permanent program Rule XXIV expands upon the procedures authorized by these Sections of the Act.

On an annual basis approximately 25 percent of the staff time involving Montana's Coal Reclamation Program is spent on coal mine inspection trips. Rule XXIV(1) requires an inspection frequency of at least one partial inspection of each mining operation per month and at least one complete inspection of each operation per calendar quarter. Past inspection frequency by DSL personnel has far exceeded this requirement. Considerable staff time is also spent inspecting potential new mine areas whether they be proposed expansions of existing mines or proposed new mines.

Prior to making an inspection, an inspector must familiarize himself with the approved mining or reclamation plans, with any proposed changes to such, and with recent inspection reports. It is Departmental policy to rotate different inspectors on mine inspection trips. In this way, the mine is viewed through different sets of eyes and by individuals with different professional training. Inspection schedules are coordinated by the coal bureau chief. Often times a thorough mine inspection takes a day or longer to complete.

Details considered during mine inspections are included on the inspection report form found in Appendix D. This checklist is completed for every mine inspection. When problem situations are noted, they are, when possible, immediately brought to the attention of company officials or are described in a post inspection letter. Notices of violation and cessation orders will be issued in the field by authorized DSL mine inspectors pursuant to 82-4-251 MCA.

All proposed prospecting permit areas are inspected before a permit is issued (see Section 8(a)(1) of this submission). After issuance, such areas are then inspected at irregular intervals to ensure compliance with Montana's Act and Rules. DSL's primary concern during such prospecting permit inspections is to ensure that the holes have been plugged, regraded and properly reseeded.

All inspections by DSL staff are conducted without prior notice to the permittee except where necessary for on-site meetings [Rule XXIV(2)].

Section 82-4-231(2) (S.B. 515) and Permanent Program Rule XXIV(4) describe DSL procedures for public participation in the inspection process. Quoting from Rule XXIV:

Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, this subchapter, or the permit, or condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.

The monitoring of revegetation success, subsidence, erosion, and other reclamation concerns occur during the course of mine inspections. Inspectors become familiar with particular concerns for each mine through staff discussions and familiarity with the mine. Where revegetation problems are revealed DSL may require a company to prepare an investigative report pursuant to Rule IX (11). Rule IX(14) requires operators to periodically conduct measurements of vegetation, soils, and water quality on reclaimed areas when instructed to do so by DSL.

The Department of Health and Environmental Sciences will be adding a permanent program staff member to oversee company air quality monitoring pursuant to permanent program Rule XI (see Sections 5, 9 and 10).

Lastly, DSL staff and personnel contracted by the Department have monitored revegetation success at 4 of Montana's largest coal mines for the past 4 years. Production, species diversity, and other parameters are measured along a series of permanent transects in different reclamation areas.

e. Enforcement procedures

References for this section are made to P.L. 95-87 and 95-87 and 30 CFR Chapter VII. Cross-references to the Montana Strip and Strip Underground Mine Reclamation Act as amended (S.B. 515) and 515 and DSL's permanent program rules may be found by checking the side-by-side comparison in Appendix C.

1. Section 5219a)(3) and (4) of P.L. 95-87 and 30 CFR 840.13

Section 82-4-251(1), (2) and (3) MCA give the Commissioner of DSL or his authorized representative authority to issue cessation order notices of violation and suspension orders respectively. Notices of violation and cessation orders will be issued in the field by authorized representatives of the Commissioner. Suspension orders will be issued only after the permittee has been given opportunity for a hearing. The legal staff will arrange and prepare all paperwork necessary for hearings and present the Department's case at all hearings. A member of the attorney general's staff will act as hearings examiner for administrative hearings. On judicial review of departmental notices and orders, the Department's legal staff, each of whom has been appointed as special assistant attorney general for representation of the department, will represent the Department.

2. Section 521(a)(i) and Section 525 of P.L. 95-87 and 30 CFR 840.13

Each of DSL's coal mine inspectors will be given a standard cessation order form to fill in and issue should a condition or practice which requires issuance be encountered. The legal staff will arrange and prepare all paperwork necessary for hearings and present the Department's case at all hearings. A member of the attorney general's staff will act as hearings examiner for administrative hearings. On judicial review of cessation orders, the Department's legal staff, each of whom has been appointed special assistant attorney general for representation of the Department, will represent the Department.

3. Section 521(c) of P.L. 95-87

DSL's legal staff will file and conduct any lawsuits instituted pursuant to the state statute corresponding to this subsection (see 82-4-254(3), S.B. 515).

4. Section 521(e)(f)(g) and (i) of P.L. 95-87

The filing of criminal actions is the responsibility of the various county attorneys throughout the state. Whenever the Department's legal staff is of the opinion that criminal action is appropriate, a member of the legal staff will request the appropriate county attorney to file charges. He will assist the county attorney in investigation and prosecution as requested. If the county attorney improperly refuses to file charges, the Department's legal staff will seek intervention by the attorney general, who has supervisory authority over county attorneys. All criminal appeals are handled by the attorney general's office. DSL's legal staff will assist the attorney general's staff if requested.

f. Administration and enforcement of permanent program performance standards

There is no specific portion of the Montana Strip and Underground Mine Reclamation Act as amended by S.B. 515 or the Department's permanent program rules that in one place describes how DSL will administer and

enforce the permanent program performance standards. Several sections of this submittal however partially describe how DSL will administer and enforce such standards:

(1) Appendix C of the submittal contains a section by section comparison of Montana's coal reclamation law and rules (as amended), with P.L. 95-87 and 30 CFR Chapter VII. See, in particular, the side-by-side comparison for 30 CFR Subchapter k. Montana's amended coal law and rules provided the legal backbone for enforcing the permanent program performance standards.

(2) Section 7(a) of this submittal describes how DSL will receive, review and make decisions on coal permit and coal prospecting applications. Review of performance standards compliance begins with a company's application submittal and the subsequent review by DSL staff. DSL employs and will continue to employ a highly capable, environmentally oriented, professional staff. The education and experience of Montana's permanent program staff will have the diversity necessary to technically understand all coal mine performance standards (see, in particular, Table 1 on page 11, and Section 9 and 10 of this submittal).

(3) Section 7(d) of this submittal describes how DSL will inspect and monitor Montana's coal mines and prospecting areas under the permanent program. Field review for permit compliance is a key to enforcing the performance standards during the life of a permit. Problem situations are promptly brought to the attention of the company and where necessary, investigative reports are required by DSL.

(4) Section 7(e) of this submission describes DSL enforcement procedures with regards to noncompliance with any portion of Montana's Act or rules. DSL has not been lax with regards to issuing violations in the past, and this practice will not change under the permanent program. Sections 82-4-251(1) and (3) MCA (S.B. 515) respectively give DSL the authority to suspend a company's permit if it is found to be creating an imminent danger to the health, safety or welfare of the public or if it is found to be in repeated violation of the law.

g. Assessing and collecting civil penalties

DSL's procedure for the assessment and collection of civil penalties is contained in 82-4-254(2) MCA (S.B. 515). It should be noted that, unlike the federal system, the state must assess a penalty for every violation. Appendix D of Montana's permanent program submission contains an interdepartmental memo setting forth DSL's policy on how civil penalty levels are established. The amount assessed will be determined by considering the factors set forth in 30 CFR 845.13 and the amount that has historically been assessed for similar violations. However no point system will be used.

The Department's legal staff will prepare notification, called "notices of noncompliances" and handle all correspondence relating to the violation and will keep all files and records with regard to each violation. The legal staff will present the Department's case at all administrative hearings. The attorney general's office will provide hearings officers for all administrative hearings. The Department's attorneys have been appointed as special assistant attorneys general to represent the department and they will therefore bring action to collect civil penalties or defend the Department's assessment against a coal company.

h. Issuing public notices and holding public hearings

Montana's Act and Rules as amended contain numerous provisions for issuing public notices and holding public hearings. DSL procedures will be exactly the same as required by the Act and rules. Applicable portions of the Act are:

- 82-4-205(8) MCA (S.B. 515)
- 82-4-222(1)(k) MCA (S.B. 515)
- 82-4-231(2) MCA (S.B. 515)
- 82-4-232(6) MCA (S.B. 515)
- 82-4-239(4) MCA (S.B. 515)

Applicable portions of the permanent program rules are:

- Rule II(2)(v) - newspaper advertisement.
- Rule II(4)(o)(iv) - hearing on reclamation and operating plan, submission of information.
- Rule III(1) - newspaper advertisement at time of filing a permit application. Also, notice to government agencies.
- Rule III(1)(d)(ii)(B) - newspaper advertisement of informal conference on permit application.
- Rule III(3) - newspaper advertisement due to major permit revision (implied).
- Rule III(4) - newspaper advertisement due to a permit renewal.
- Rule III(5) - newspaper advertisement due to an application for Rule III(1) - and addition of acreage.
- Rule III(6) - newspaper advertisement due to a transfer of a permit.
- Rule III(7) - hearing on administrative review on application for a permit.
- Rule VI(3)(a)(i) - newspaper publication of blasting schedule.
- Rule VI(3)(a)(ii) - distribution of blasting schedule to local governments, utilities and residents. Also, this section provides for dissemination of information to local owner or resident on in how to request a pre-blasting survey.
- Rule VI(3)(a)(iii) - republication and redistribution of blasting schedule every 12 months.
- Rule VI(3)(c) - public notice of changes to blasting schedule.
- Rule XVI(2) - newspaper advertisement of alternate reclamation plan at time of filing a permit application.
- Rule XVIII(3)(c) - public notice of underground mining schedule to residents and owners above and adjacent to adjacent underground workings.

- Rule XIX(8) (b) - public notice of the application of a prospecting test pit.
- Rule XIX(8) (d) (ii) - right to administrative review as per Rule III(7).
- Rule XX(11) (b) - newspaper advertisement of filing for bond release.
- Rule XX(11) (c) - request for hearing on proposed bond release.
- Rule XX(11) (3) (i) - newspaper advertisement of informal conference on written objectives to bond release.
- Rule XX(11) (g) - request for hearing on department's decision on bond release.
- Rule XX(11) (h) - public hearing and newspaper advertisement on decision to release bond.
- Rule XXII(4) (c) (ii) - newspaper advertisement of a public hearing on permitted mining under limitations imposed by 82-4-227.
- Rule XXII(4) (c) (iii) - Opportunity for a public hearing (as above).
- Rule XXII(4) (d) - newspaper advertisement of and opportunity for a public hearing on intention to move a public road.
- Rule XXIII(4) (b) (ii) (B) - newspaper advertisement on determination of complete petition for designation of lands unsuitable.
- Rule XXIII(4) (c) (i) - hearing on above.
- Rule XXIII(4) (c) (iii) - newspaper advertisement of hearing on above.
- Rule XXIV(7) - informal hearing on notice of violation or cessation order.
- Rule XXIV(7) (d) - newspaper advertisement of hearing on above.
- Rule XXV(2) (a) - newspaper advertisement of suspension or revocation of permit.
- Rule XXV(3) - show cause hearing on above.

i. Coordination of permits with other agencies

To the extent possible, DSL coordinates with other federal and state agencies that also have permit decisions applicable to the proposed operation. When DSL has a statutory time deadline that does not allow for the culmination of all other applicable permit processes before a DSL decision is reached, the department will condition the Strip and Underground Mining permit such that the permittee cannot begin operations on all or portions of his proposed permit area until he has demonstrated that he has complied with all other laws applicable to his project.

It is the duty of Chief of the departments coal and uranium bureau to notify other agencies that have or may have a permit decision with regards to a coal mine or coal prospecting activity. It is also the duty of the Bureau Chief to coordinate permit review time frames with other agencies to the best of his ability.

DSL coordinates with the Montana Department of Health and Environmental Sciences (DHES) when reviewing and issuing coal mine permits. DHES has statutory responsibility for the protection of air and water quality in Montana and pursuant to such responsibility, issues air quality construction permits and MPDES permits (see Section 5 and Appendix B). DSL and DHES staffs routinely coordinate with each other with regards to data collection for permits, technical support, etc. Although MPDES permits and strip mining permits are issued by two separate agencies, staff members of DSL and DHES discuss the effluent limitations for each individual mine before an MPDES permit is issued.

Other agency permits, such as those required from MSHA, must usually be received prior to the issuance of a strip mine permit from DSL. Prior issuance is insured by requiring a copy of such permits in the company's application for a strip mine permit (see permanent program Rule II).

Lastly, DSL and OSM will coordinate the permit review and issuance of mine permits involving Federal Coal pursuant to Montana's Cooperative Agreement with the Department of Interior. A copy of the existing Cooperative Agreement and protocol document may be found in Appendix E.

j. Consultation with agencies having jurisdiction over fish, wildlife, historic, cultural and archaeologic resources

Consultation between DSL and wildlife agencies will for the most part be on an informal basis. The department's wildlife biologist maintains close contact with the Montana Department of Fish, Wildlife and Parks and with the U.S. Fish and Wildlife Service, and if applicable, the BLM. If an endangered or threatened species is involved or a species covered by a similar state or federal act (for example the 1940 Eagle Act), a formal sign off is required by the appropriate agency before DSL can issue a permit. While DSL's wildlife biologist consults with other agencies the ultimate decision regarding compliance with 82-4-231 (3)(j) MCA (S.B. 515) and permanent program Rule X is made on the basis of the DSL biologist's professional opinion.

Montana coal program permit review for impacts to archaeological, cultural and historic values is made with assistance from the staff at the State Historic Preservation Office (SHPO). Such reviews are coordinated with that required by the appropriate federal agency having responsibility under 30 CFR 106. Because the SHPO must "sign off" on the federal agency recommendation, DSL normally utilizes the SHPO "sign off" on a proposal as a determination that historic, cultural, and archaeological resources have been adequately protected.

f

k. Designation of lands unsuitable program [30.CFR 731.14(g)(11)]

Montana is developing a program that meets the requirements of Section 522 of P.L. 95-87 and 30 CFR 764. In May, 1979 a program development grant application totaling \$188,708 was submitted to the Denver office of the Office of Surface Mining. Montana's program development grant application was prepared solely for the purpose of developing a designation of lands unsuitable computer system within the Department of State Lands. This grant application has been amended twice after consultation with O.S.M. and the Department is currently awaiting funding.

The attached copy of Montana's program development grant application describes how the Department intends to develop and implement a designation of lands unsuitable program. Task I of the program will be contracted to the Systems Information Division of the Montana Department of Administration upon receipt of funding from OSM.

The Montana Strip and Underground Mine Reclamation Act was amended by the 1979 session of the Montana legislature to give DSL the authority to implement a designation of lands unsuitable program. (see Section 10 of S.B. 515, MCA in Appendix A). In addition, DSL has adopted rules and regulations for a designation program (see Rule XXIII of the Department's new rules in Appendix A). This rule articles provisions for terminating designations and for public participation in the designation process.

DEPARTMENT OF STATE LANDS



101 STATION, HELENA, MONTGOMERY

THOMAS L. JUDGE GOVERNOR

LEO BERRY, COMMISSIONER

July 26, 1979

Mr. Herb Angle
Grant Management Specialist
Office of Surface Mining
Old Post Office - Downtown
1823 Stout Street, Room 219
Denver, CO 80202

RE: Program Development Grant
Submitted Pursuant to 30 CFR 740.

Dear Herb:

Enclosed are three copies of a program development grant to cover the costs of researching, developing and inputting data into a "designation of lands unsuitable" computer system. The purpose of this grant application is to implement Section 522 (a)(4)(B) of the Federal Strip Mining Act. The total grant budget is \$188,708, with the State's share being \$37,742.

Costs itemized in this application include equipment, travel expenses, contracted services, and other costs chargeable under Part 740 of the OSM regulations. This amended submittal should reflect the changes that you and Dick Juntunen discussed last week.

Please call as questions arise, and thanks for all your help and patience.

Sincerely,

Bruce Hayden
Administrator
Reclamation Division

k1

Enclosures Enclosures

MONTANA

Program Development Grant Application for the Development of Designation of Lands Unsuitable Program

Introduction

The Montana Department of State Lands (DSL) is developing a state program to regulate coal mining within Montana pursuant to the Federal Strip Mining Act. To obtain approval of such a state program from the Office of Surface Mining (OSM), DSL must implement a "designation of lands unsuitable for mining" process pursuant to Section 522 of the Federal Act.

The Montana Strip and Underground Mine Reclamation Act was amended by the 1979 session of the Montana Legislature to give DSL the authority to implement a "designation of lands unsuitable" program (see Section 10 of S355, attached). In addition, DSL has adopted rules and regulations for a "designation" program (see Rule XIII, attached).

The purpose of this program development grant application is to provide funding for:

- A. Planning and development of a data base and inventory system which will permit proper evaluation of the capacity of different land areas in Montana to support and permit reclamation of surface coal mining operations.
- B. Development of a computer inventory system for storage and retrieval of appropriate data in accordance with Item A above. This computer inventory system will be utilized in evaluating petitions submitted in accordance with Montana's designation of lands unsuitable for coal mining program.
- C. Initiation of the data collection for the computer inventory system, and the storage and utilization testing of these data for the evaluation of petitions.

The development of a "designation of lands unsuitable for mining" program is divided into four tasks as follows:

Task 1 - User, Information, and Contractor Survey and Development of a Detailed Work Plan

Task 2 - Computer Systems Evaluation

Task 3 - Computer System Design and Purchase

Task 4 - Data Collection and Entry and Entry

A major portion of the effort during the first 1.5 months of the "designation" program development will be the identification of the information required in the proposed computer inventory system and the development of a detailed work outline for carrying out the collection and implementation of this evaluation system. An equally important portion of this early developmental work will be the identification of a qualified contractor or contractors to assist with the development of the desired computer system.

The forementioned tasks may overlap in terms of timing; however, Tasks 1 and 2 must be completed before Tasks 3 and 4 may begin.

TASK 1 - User, Information, and Contractor Surveys and the Development of a Detailed Work Plan

During this initial phase of the project, a survey of user needs will be conducted and available information formats relative to coal lands will be assessed. A detailed work plan will also be prepared and potential contractor interviews will be conducted.

A. User Needs

DSL will carefully identify its needs for data retrieval in order to accurately assess petitions under the "designation of lands unsuitable program".

B. Identification of Available Data Information for Input

Many state and federal agencies have information already on file in various filing systems, and different stages of completion, that can be used in DSL's designation program. These available lists of information will be identified in order to determine formats and their availability and suitability for entry into a computer system. Suitability assessment will include a determination of a data base's ability to be modified for data storage and retrieval in a computer system. The table on the following page shows the various information files which will be surveyed for inclusion in the overall system.

C. Information File Interface Needs

After the information to be filed into the system has been assessed and identified, it will be necessary to relate the different kinds of access and cross-utilization of data which will be required in making designation decisions. This stage will be very important to the future contractor hired to design a computer system to adequately access and retrieve information needed by DSL.

D. Preparation of a Detailed Work Plan

A detailed work plan and budget will be developed. This plan will serve as the framework within which a contractor will design the "designation" computer system. Included in the work plan will be an identification of the data to be entered in the system, a discussion of how data will be collected and entered, and a time estimate as to when the system will be functional.

E. Contractor Interviews

Following the completion of the preceding steps, it will be necessary to identify a contractor who has the expertise to develop a computer system capable of meeting DSL's "designation" program needs. More than one contractor may be involved in the project from this point forward.

TABLE 1

Resource Categories and Data Sources to be Inventoried
for Montana's "Designation" Program

<u>Resource Category</u>	<u>Data Sources</u>
Reclaimability	Universities, DSL, BLM
Coal economics (Depth, thickness, quality)	DNR, DSL, BLM, Universities, Bureau of Mines, Coal Company Records
Natural hazards	DNR, DSL, Universities, Bureau of Mines
Scientific	Fish & Game, Universities
Geologic	BLM, USGS, Bureau of Mines, Universities
Paleontologic	Universities
Archaeologic	M.A.R.S., Montana Historical Society, NPS, Universities, BLM, U.S.F.S.
Historic	Montana Historical Society, BLM, U.S.F.S., NPS, H.C.R.S.
Faunal	Fish & Game, U.S.F.S., NPS, DSL
Floral	Universities, U.S.F.S., NPS, DSL
Recreational	Fish & Game, DSL
Scenic	Fish & Game, U.S.F.S., BLM, DSL

For each resource category identified above (and any additional sources as appropriate) in Task 1, data will be sought from the following sources:

- A. Maps, Mapsets and Plates
- B. Periodicals
- C. Unpublished Thesis
- D. Unpublished Technical Reports
- E. Unpublished Documents
- F. Published Documents
- G. Published Technical Reports
- H. Personal Communications
- I. Environmental Impact Statements & Statements
- J. Bibliographies
- K. On-going Agency Inventories
- L. Meetings and Workshops (where necessary) & necessary
- M. Permit Specific Data

TASK 2 - Computer Systems Evaluation

Utilizing the contractor(s) chosen to design the "designation" computer system, an in-depth evaluation of available computer programs, both locally and from existing inventory systems will be conducted. In-state computer installations, existing hardware, and terminal systems will be evaluated for compatibility with the data base which has been identified during Task 1.

Basic requirements to be sought in a computer system will be an ability to store and retrieve data as well as to relate to and aid in evaluating the following major topics:

- A. Reclamation of an area with regards to technological and economic feasibility.
- B. Compatibility of certain areas for mining in relation to existing state or local land use plans.
- C. The effect of potential coal mining on fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.
- D. The effect of potential coal mining operations on renewable resource lands in which such operations could result in substantial loss or reduction of long-range productivity of water supply, of food and fiber products, and of aquifer systems.
- E. The effect of potential coal mining operations on natural hazard lands in which such operations could result in substantial danger to life and property, including areas subject to frequent flooding and areas of unstable geology.
- F. Basic coal resource information, including potential future demand and economic significance of the resource.
- G. The computer system will be designed to allow for continued updating of the information stored within it. The extensions of variables included in the replacement of specific data will be allowed. Each petition received will result in new data being added to the system on an additional land parcel or parcels.

At this time the basic steps and procedures will be outlined for the inter-computer file and retrieval system. A procedure integrating the petition process will also be outlined.

TASK 3 - Computer System Design and Purchase

During the third phase of the study, computer software and the necessary hardware will be chosen to meet the needs defined in Tasks 1 and 2. This phase may involve equipment purchases in order to provide ready, on-line access to a computer.

In choosing a computer system, the following will be considered:

- A. The availability of the computer system to the user (both DSL and the Montana public). The timely turn-around of information needed will be given special consideration.
- B. Use of computer system. An effort will be made to orient the computer system towards the user rather than towards the computer programmer. The user should be able to submit a command with a minimal amount of computer control statements. The computer system should be usable by persons unfamiliar with computers or with the internal workings of the computer information system chosen.
- C. Cost of data storage and retrieval. This will in part determine the computer site selected for the implementation of the system.
- D. Choice of computer language. Transferability of the computer system constructed from one computer to another will be considered in the choice of a computer language to be utilized in the development of the software and the information storage system.
- E. Ease in integrating other system components at a later date. In addition to the resource categories mentioned in Table 1, the feasibility of developing a basic management system to provide integration of permit information and permitting procedures will be investigated. This may become a future sub-system of the "designation" data storage and retrieval system.

Following the above, the identification of appropriate remote terminal hardware and graphics equipment will be made. Various configurations and the use of these hardware configurations will be investigated in order to insure that their use is necessary and that the equipment purchased has the proper capabilities. Further specifics of the computer system design will be itemized during the preparation of the detailed work plan as listed in Task 1, D.

TASK 4 - Data Collection and Entry

This phase involves the actual data collection and subsequent entry into the computer information system. User needs and existing data identification in Table 1 will be utilized to complete this phase of the project.

It is not intended that the data collection and entry tasks be completed during the period of the program development grant (one year). Instead, it will be an on-going part of Montana's "designation of lands unsuitable program". Additional monies to continue this program will be applied for under a permanent program grant.

Data collected and entered will be on a priority basis with that information most readily available and most useful in determining unsuitable lands being the first to be implemented into the system. As information is collected and entered into the system, the coding and retrieval will be tested. In this manner, it is expected that the entire system will be operational as the data is collected.

Funding Needed for Program Development

DSL is initially applying for \$150,966 in program development monies to develop a "designation" program. These monies would be utilized to accomplish the four tasks outlined on the preceding pages. A budgetary outline is included on the following page, showing the state's 20 percent share for a total grant budget of \$188,708.

A. DSL Staffing

DSL anticipates hiring one project coordinator to work on the designation program. We are seeking an experienced project coordinator to work under direct supervision of the Assistant Administrator of the Reclamation Division. The project coordinator will act as the direct point of contact for all consultants hired for the various program tasks and will be expected to work with and facilitate the duties of the consultants. The project coordinator's first major effort will be to complete Task 1.

B. Contracted Services

The Department anticipates spending \$123,534 (73.5 man-months) for contracted services during the one-year period of this program development grant. It is anticipated that different consultants will be hired during different phases of the project. During Task 1, for example, consultants would be utilized to conduct the literature reviews needed to identify existing data sources available for input, while during Tasks 2 and 3, consultants would be used to help evaluate potential computer systems and to design a system suitable to the department's needs. The greatest number of man-months of contracted services would be expended during Task 4, with the collection of data and the entry of such data into the computer system. A rough breakdown of the contractual services needs of the four tasks are as follows:

Task 1 - 3.0 man-months - Project Coordinator + Systems Planner, 1.5 months

Task 2 - 15.0 man-months - Project Coordinator + 2 Systems Analysts, 5 months

Task 3 - 4.0 man-months - Project Coordinator + Programmer, 2 months

Task 4 - 51.5 man-months - Project Coordinator, 3.5 months + 6 Field Researchers, 6 months

C. Travel

Travel expenses of \$18,000 are anticipated to cover the costs of literature research and consultation with university and other agency personnel, consultation with contractors located out of the Helena, Montana area, and for attendance at OSM and other meetings regarding the "designation of lands unsuitable program". The major portion of this budget item will be for data compilation under Task 4.

D. Equipment

Equipment costs include \$29,000 for computer hardware. This estimate is considered to be at the high end of the possible range and would include the following items at a minimum:

Techtronics Graphics Display Terminal Mode,
Telephone line, Hard Copy Unit Data Entry
Equipment (Graphics Tablet and temporary
storage device)

Other Costs

Other costs include computer time, computer room rental, phone, xerox, and postage. The \$4,000 allocated for computer time is a "best estimate" of the computer time required to develop Montana's "designation program" during the first year.

In addition, DSL wishes to rent a Mag Card II typewriter or D.E.C. word processor (WD/78) for the designation program because it feels that use of such equipment would reduce the need to hire another secretary specifically for the "designation program".

Budget - Program Development
Montana Designation of Lands Unsuitable Program

Contracted Services

Task (1-4) Program Coordinator, 12 man-months (Grade 16)	\$21,339
Task (2) Systems Planner, 1.5 man-months (Grade 16)	2,667
Task (2 & 3) Systems Analyst, 10 man-months (Grade 16)	17,780
Task (4) Programmer, 2 man-months (Grade 16)	3,556
Task (4) Field Researcher, 48 man-months (Grade 15)	78,192
	<hr/>
	subtotal \$123,534

Travel

Program Coordinator (state agencies, Region V, other states)	\$ 3,000
Systems Planner (state agencies, other states)	500
Systems Analyst (state agencies, other states)	2,500
Field Researchers (state information sources)	12,000
	<hr/>
	subtotal \$ 18,000

Supplies

Desks, chairs, files and miscellaneous office equipment	\$ 2,474
---	----------

Equipment

Terminal with printer	\$ 17,000
Map Digitizer	11,000
Modem	1,000
	<hr/>
	subtotal \$ 29,000

Other

Computer time, (8 months) @ \$500/month	\$ 4,000
Computer equipment room rental, (8 months) @ \$150/month	1,200
Phone (computer time and personnel)	1,600
Mag Card or Word Processor, (1 year rental and misc. equip.)	8,200
Postage	350
Xerox charges	350
	<hr/>
	subtotal \$ 15,700

GRAND TOTAL \$188,708

State Share \$37,742
Federal Share \$150,966

1. Restrictions against financial interests

Permanent program Rule XXVIII (Appendix A) describes DSL's procedures for monitoring, reviewing and enforcing restrictions against direct and indirect financial interests of state employees in surface coal mining and reclamation operations. All interim program employees are required to fill out the "Statement of employment and Financial Interest Form" (OSM Form 705-1) pursuant to 30 CFR 705.4(a)(7) and this procedure will continue during the permanent program.

m. Training and certification of blasters

Permanent program Rule VI(1)(a) states:

Each person who conducts strip or underground mining operations shall comply with all applicable state and federal laws in the use of explosives.

Within 6 months after the Federal regulations for the training and certification of blasters have been promulgated, DSL will require that all coal companies be in compliance with 30 CFR Part 850.12 (general program requirements). Blasters will have to attend a training program that meets the requirements of 30 CFR 850.13. Lastly, DSL will require, as a permit condition, that the company present evidence that their blasters have met the certification requirements of 30 CFR 850.14. Six months after adoption of 30 CFR 850, DSL will periodically check with each coal company to ensure that blaster certifications are valid at all times while conducting blasting operations. This check would be made during normal inspections when blasting logs, seismic records and other pertinent information are looked over by the reclamation blasting inspector.

n. Providing for public participation in the state program

The drafting of changes in the Montana Strip and Underground Mine Reclamation Act began in late October 1978 and lasted until mid-January 1979. Changes in Montana's Act were necessary in order to meet the permanent program requirements of P.L. 95-87. Four bill drafts were prepared during the October-January period and DSL met with the Montana Coal Council, OSM, and the Northern Plains Resources Council in preparing the 2nd, 3rd, and 4th drafts. Once the bill (S.B. 515) was introduced into the legislature, at least 4 committee hearings were held. During the time of bill drafting and committee hearings, several articles describing the purpose for changing Montana's Act appeared in major newspapers throughout the state.

The Montana Administrative Procedures Act requires that prior to the adoption, amendment or repeal of any rule that the agency:

- 1) give written notice of its intended action;
- 2) afford interested persons 14 days to submit comments on proposed rules;
- 3) consider all comments received and to prepare a preamble to proposed final rules explaining why or why not a rule was changed pursuant to a public comment.

Pursuant to such requirements the following chronology was followed in developing Montana's permanent program rules:

- 1) Drafting - Because of OSM's lateness in issuing rules, proposed rules were drafted with negligible public participation.
- 2) Hearing Process - May 25, 1979 - Notice of proposed rules in MAR. Over 100 copies distributed to various persons, group and companies;

June 18, 1979 - Public hearing held. Comments received from 3 groups, individuals, or companies.

June 22, 1979 - Comment period closes. DSL received comments from 18 groups or individuals.

- 3) Adoption - Rules were adopted by the State Board of Land Commissioners on July 19, 1979.

Copies of Montanas proposed state program will be available for public reading after August 3, 1979 at DSL's offices in Helena and Billings. In addition, copies of this submittal are being sent to the Montana Coal Council and the Northern Plains Resource Council.

Permanent program revisions would be made by following similar procedures as described for program adoption. State program amendment procedures are described in 30 CFR 732.17. Major revisions of permits or permit amendments (see section 7a) are subject to the same public notice, filing, comment, objection and hearing provisions as original permit [see permanent program Rule III(3)].

There are two sections in the Montana Strip and Underground Mine Reclamation Act that describe citizen participation in the enforcement of Act and rules.

1. Section 82-4-252 MCA provides for mandamus. In accordance with this section a resident of Montana who knows that a requirement of the Montana Strip and Underground Mine Reclamation Act is not being enforced by a public officer or employees whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statement or changes in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident can bring an action of mandamus in a Montana district court. The court, if it finds that a requirement of the Act or rules is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to civil penalties.

2. Section 82-4-231(2) (S.B. 515) and Permanent Program Rule XXIV(4) describe DSL procedures for public participation in the inspection process. Quoting from Rule XIV:

Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement; giving the department reason to believe that there exists a violation of the Act, this subchapter, or the permit, or condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm shall remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.

After DSL has conducted an inspection to investigate a citizen's complaint, the inspector will follow-up the inspection with a letter to the citizen stating the findings of the inspection. As a matter of policy, such letters will also state that if the citizen disagrees with the findings of the inspector he (or she) may consult with the Commissioner. It should be pointed out that Montana has a very small population and hence it is relatively easy for a citizen to make an appointment to consult with any public official.

Department of Environmental Quality
in a Montana District court. The court, if it finds that any of the Act or rules is not being enforced shall order the public officer or employee, whose duty it is to enforce the same, to perform his duties. If he fails to do so, the public or employee shall be held in contempt of court and be subject to civil penalties.

o. Administrative and judicial review of Department of State Lands actions

The section by section comparison in Appendix C of P.L. 95-87 and 30 CFR Chapter VII to Montana's coal reclamation Act and rules as amended gives comparable hearing and judicial review requirements. Administrative review will take place in accordance with the Montana Administrative Procedure Act provisions for contested cases (see ARM Title 2, Chapter 4, Part 6 in Appendix B). DSL's legal staff will be responsible for presenting the Department's case at administrative hearings. The attorney general's office will provide hearings examiners.

Judicial review is provided for in ARM Title 2, Chapter 4, Part 7 (see Appendix B). If such provisions are not applicable, Departmental actions are reviewed by means of injunction (see Chapter 19, Title 27, MCA in Appendix B) and other common law remedies. The Department's legal staff has been appointed as assistant attorney generals to represent the Department in court and will do so as a part of Montana's permanent legal program.

p. Small operator assistance program

The Department of State Lands (DSL) will administer the Small Operator Assistance Program (SOAP) in Montana (30 CFR 795). The attached letter to Don Crane and enclosures constitute DSL's application to administer SOAP and provides information regarding how this Departmental program will initially operate.

Section 82-4-22 MCA (S.B. 515) and permanent program Rule XXVI give the legal authority for Montana's SOAP program.

DEPARTMENT OF STATE LANDS



THOMAS L. JUDGE, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074

LEO BERRY, COMMISSIONER

1625 ELEVENTH AVENUE
HELENA, MONTANA 59601

November 14, 1979

Mr. Donald Crane
Regional Director
Office of Surface Mining
Department of the Interior
Old Post Office--downtown
1823 Stout Street, Rm. 270
Denver, Colorado 80202

Re: Small Operator Assistance Program

Dear Don:

The following narrative and enclosures are a response to your letter of May 10, 1979 and as such constitute Montana's application to administer the Small Operator Assistance Program (SOAP) in this state. This letter revises the initial SOAP application submitted on August 3, 1979. SOAP would be administered in Montana by the Department of State Lands (DSL), the designated state regulatory authority.

DSL's intent to administer SOAP and to receive federal funding for that purpose is exhibited in the two enclosed letters which date back to March, 1978. Section 82-4-22 of the Montana Strip and Underground Mine Reclamation Act as revised by the 1979 Legislature (S.B. 515) and DSL's permanent program Rule XXVI adopted pursuant to the revised Montana Act give the legal authority and ability for DSL to comply with 30 CFR 795 in administering SOAP.

Questions regarding Montana's proposed SOAP program should be addressed to Neil Harrington of this Department.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce".

Bruce Hayden, Administrator
Reclamation Division

xc: Neil Harrington
Leo Berry, Jr.
John Higgins

lw

INITIAL GRANT APPLICATION
TO ADMINISTER A
SMALL OPERATOR ASSISTANCE PROGRAM

in

Montana

Submitted by the

Montana Department of State Lands
Capitol Station

to: Neil L. Helena, Montana 59601

Leo Berry, Jr.

John Higgins.

TABLE OF CONTENTS

I. Response to Donald Crane's Letter of May 10, 1979 regarding SOAP 1

II. Explanation of Costs for the Initial Year of Montana's SOAP 2

III. Federal Form 424 -- Operation Grant Application for Montana's SOAP 11

IV. Federal Form 424 -- Administrative Grant Application for Montana's SOAP 16

V. relevant Letters Regarding Montana's SOAP 21

LIST OF TABLES

Table No.	Page
1 Cost Summary for the Initial Year of Montana's SOAP . . .	7
2 Field Costs for the Initial Year of Montana's SOAP (contracted services)	8
3 Lab Costs for the Initial Year of Montana's SOAP (contracted services)	9
4 Costs for the Writing of Reports; Equipment and Materials for the First Year of Montana's SOAP (contracted services)	10

I. Response to Don Crane's Letter of May 10, 1979 regarding SOAP

(1) Montana is requesting \$84,170 in SOAP funding for the initial year of the program. An outlined breakdown of the first year's costs are included on the following pages. Laboratory contract costs constitute \$57,335 of the total.

(2) Montana's SOAP program will be administered by a full-time, Department of State Lands (DSL), Reclamation Division employee. Because a large aspect of the SOAP program would be to determine the probable hydrologic consequences of a small operator's proposed mining plan, the department will hire a hydrogeologist as its SOAP administrator. This individual will coordinate with other Reclamation Division personnel regarding the preparation of a statement of the results of test borings or core samples.

(3) DSL's list of qualified laboratories will be developed using the procedures in permanent program Rule XXVI(6). The department may also use OSM's laboratory list for names of laboratories that have not applied to DSL for approval. Lab performance, in terms of actual chemical and physical analyses of water and overburden, will be evaluated by periodically requesting split samples for analysis by the same or other lab; and also by periodically providing standard samples to a lab for analysis. These activities may be coordinated with other agencies who are also involved with laboratory certification such as the EPA or the Montana Water Quality Bureau.

(4) DSL will contract with a laboratory by first soliciting proposals (including a bid) from prospective candidates. A contract would be issued after careful evaluation of all proposals.

(5) Information concerning a proposed mine's "general area", (see DSL permanent program Rule I, paragraph 24), will be made available by the development of a departmental bibliography of references. These references will be keyed to various geographic areas of interest.

(6) DSL does not at this time see a need for small operator assistance application forms. The information required in order to apply for assistance [see permanent program Rule XXVI(3)] could be submitted in any reasonable format.

The ownership pattern of a company will be determined by requesting information pursuant to DSL's permanent program Rule XXVI(2)(b) as part of an application for assistance.

The actual production of a mine can be verified by contacting the Montana Department of Revenue which requires quarterly production reports from each mine.

(7) DSL anticipates that 6 small operators may apply during the first year of a SOAP program in Montana. Five of these would be existing operators who need to upgrade their permits in order to comply with Montana's Act and Rules as revised pursuant to P.L. 95-87 and 30 CFR Chapter VII. DSL also anticipates proposed mine expansion

by two of these operators. The sixth operator would be completely new and for which an application is anticipated.

(8) The only other agency that DSL anticipates may contract with DSL pursuant to SOAP would be the Water Quality Bureau of the Montana Department of Health and Environmental Sciences. The Water Quality Bureau has laboratory facilities capable of conducting water quality analysis.

DSL anticipates that the first year of a SOAP program in Montana will be 1971. Existing operators who need to upgrade their facilities in order to comply with Montana's Act and later as required per call to R.I. 47-1-401 (FEB 1970) will also anticipate the program.

II. Explanation of Costs for the Initial Year of Montana's SOAP

A cost summary is included in Table 1.

A. Salary & Benefits

Montana's SOAP program will be administered by a full-time DSL, Reclamation Division employee. Because a large aspect of the SOAP program will be the determination of probable hydrologic consequences for the mining plans of small operators, the department will hire a hydrogeologist as its SOAP administrator. This individual will coordinate with other Reclamation Division personnel regarding the preparation of a statement of the results of test borings or core samples. The SOAP administrator will be responsible for coordinating all activities with laboratories performing contracted work under SOAP. A salary and benefits breakdown for the hydrogeologist would be as follows:

Title	Projected Hours	Hourly Rate	Benefits	Total Rate & Benefits	Projected Costs
Mine Reclamation Inspector IV (Grade 14, Step 1)	2,080	7.425	1.296	8.721	\$18,139.68

B. Travel

It is estimated that Montana's SOAP administrator would spend approximately 1 man week/month in the field. Past travel vouchers show that DSL's mine reclamation inspectors spend approximately \$206/week for food, lodging and air fare. Accordingly, the total for these costs was arrived at as follows:

1 man week/mo. X \$206/man wk. X 12 mo. grant period = \$2,472
(round trip air fare between Helena and Billings, Montana is approximately \$76.00)

Average gas and vehicle maintenance for 5 field days is approximately \$50.00. Accordingly, \$50.00./month X 12 months = \$600 are budgeted for these costs.

C. Equipment

These costs are those associated with maintaining an office in Helena and are self-explanatory.

D. Supplies & Materials

This would include the costs of writing and filing materials, publications and other similar items necessary for routine office work.

E. Contracted Services

These costs are detailed in Tables 2, 3 and 4. All figures have been rounded to the nearest five dollars.

1) Explanation of Table 2 -- Field Costs

Costs for development of groundwater monitoring wells for each operation listed was calculated by multiplying the number of wells estimated to be drilled by the average depth in feet of the well by the cost per foot of drilling and casing plus the cost of development per well. For example, on the P.M. mine: 3 wells X [(70 feet/ well X \$9/ft) + \$200/well] = \$2,490.

For the ground, surface water and sedimentation pond sampling, the figures were derived by assuming the consultant or lab contracted to do the work was located in Helena and was required to make quarterly monitoring and sampling of the particular mine in question. Thus, the yearly cost for the P.M. mine was calculated as follows: (1 1/2 days of field time X \$200/day for salary) + (600 miles of travel X 30¢/mile) + \$75 for use of equipment in sampling and monitoring ° (\$35/day per diem X 1 1/2 days) = \$607, \$607/visit X 4 visits = \$2,828. This figure has been rounded off to \$2,830 as shown in the table.

For logging of holes, the figures shown were calculated by multiplying \$350/hole by the number of holes for each mine.

2) Explanation of Table 3 -- Lab Costs

Surface water, ground water and sedimentation pond water analysis is based on unit costs of \$200, \$103, and \$20 per sample, respectively, taken at quarterly intervals from each stream, well, and pond. The unit costs are based on the parameters required in the DSL guidelines for surface and ground water and, for sedimentation ponds, the effluent limitations in Rule VII(3)(f). Thus, for groundwater on the P.M. mine, 3 wells sampled quarterly results in 12 samples. This figure multiplied by \$103/sample equals \$1236 which equals \$1235 rounded off.

The coal analysis is based on a short proximate analysis which is \$25/sample. Overburden analysis is \$65/sample based on the parameters required in the DSL guidelines.

3) Explanation of Table 4 -- Preparation of Reports, Equipment, and Materials

The unit costs of professional writing, typing, drafting of maps, and binding and copying of reports are \$200/day, \$6/hr., \$15/hr., and \$25/copy, respectively.

The crest gages would be installed on the sedimentation ponds. The unit cost is \$30. The unit cost of the rain gages is \$150. The costs associated with these two items of equipment are those estimated for the purchase of this equipment by a contractor for use on the mines listed. The total cost of this equipment is estimated to be \$1170 and is listed as such under "Equipment" in Table 1, item E.

F. Other Costs

Because of staff growth as a result of Montana's administration of the Federal Strip Mine Act, DSL's Reclamation Division needs additional office space. The owner of the building leased by DSL, has agreed to add an additional 2,800 square feet of floor space to the west side of the structure and DSL intends to lease office space in this structure for the SOAP administrator.

Ten employees either have been or will be added to Montana's coal program as a result of Montana's administration of the P.L. 9587. Six of these employees are currently, or will be funded under an Interim Regulatory Program grant and three (including two contracted service employees) are funded under an Abandoned Mine Land grant. As a rule-of-thumb, approximately 1/2 of an office's floor space is consumed by walls, file cabinets, meeting rooms, etc. This would leave approximately 1,400 feet of floor space in the addition to be utilized by approximately 10 employees. This is an optimal office arrangement; however, Reclamation Division employees need large offices to allow the spreading out of maps, permits and aerial photographs and to allow for several simultaneous meetings to occur with representatives of industry. DSL's existing offices are extremely crowded and this has resulted in inferior working conditions. Only two walled offices are included in the new office area so that the Department can easily change office arrangements at any time.

Annual costs for the building addition are estimated as follows:

Rent (\$6/sq. ft.)	=	\$16,800
Utilities (\$.75/sq. ft.)	=	2,100
Janitor (\$.70/sq. ft.)	=	<u>1,960</u>
		\$20,860/year

One of the Department's 10 OSM funded employees are included in this grant and the grant period is for a 12 month period. Accordingly, the building costs included in this grant were arrived at as follows:

Rent:	\$16,800/yr.	X 1 yr.	X 1/10	=	\$1,680.00
Utilities:	2,100/yr.	X 1 yr.	X 1/10	=	210.00
Janitor:-	1,960/yr.	X 1 yr.	X 1/10	=	196.00

Long distance phone costs by DSL have risen dramatically since the passage of P.L. 95-87. Calls to Denver have become much more frequent because of departmental liaison with the Denver office of OSM. Accordingly, \$150 in phone rental and phone billing charges are also included. Other miscellaneous costs include film, camera maintenance, xeroxing and postage.

G. Indirect Costs

Indirect costs included in this grant application amount to 15% of the funds budgeted for salary and benefits.

Indirect costs will cover accounting and other bookkeeping costs associated with the administration of Montana's SOAP program. Such costs are incurred by DSL's Centralized Services Division, which has 3 staff members that spend part of their time on OSM related work.

Utilizing monies received under an interim regulatory program grant, DSL will soon contract out a study designed to determine what indirect charges it should charge when applying for federal (OSM) grants. Future indirect cost charges will be revised according to the results of this study.

Table 1 - Cost Summary for the Initial Year of Montana's SOAP*

A.	Salary & Benefits		\$18,140
B.	Travel		3,072
C.	Equipment		
	1-Executive Desk	331	
	1-Executive Chair	175	
	1-Floor Mat	28	
	1-Waste Basket	9	
	Miscellaneous	50	
			593
D.	Supplies & Materials		100
E.	Contracted Services		
	Field	37,475	
	Lab	12,110	
	Preparation of Reports	6,580	
	Equipment	1,170	
			57,335
F.	Other Costs		
	Building Rental	1,680	
	Utilities	210	
	Janitorial	196	
	Phone	150	
	Xerox	40	
	Postage	20	
			<u>2,346</u>
G.	Total Direct Charges		\$81,586
	Indirect Charges (.15 of salary & benefits)		<u>2,721</u>
	GRAND TOTAL		\$84,307

*All figures have been rounded to the nearest dollar, except for contracted services which have been rounded to the nearest five dollars.

Table 2 - Field Costs for the Initial Year of SOAP (Contracted Services)

Mines	Drilling, Casing and Development of Wells	Ground Water - Surface Water Monitoring & Sampling & Sedimentation Pond Sampling (includes labor, travel and per diem)	Electric and Lithologic Logging of Holes
P.M.	\$2,490	\$2,430	\$1,050
Divide	2,490	2,430	1,050
Coal Creek (existing)	1,410	4,740	825
Coal Creek (expansion)	1,300		550
Hathaway	1,030	3,570	550
Warburton (existing)	--	2,940	--
Warburton (expansion)	940		550
Bridger	3,300	2,780	1,050
TOTALS	\$12,960	\$18,890	\$ 5,625
GRAND TOTAL = \$37,475			

Table 3 - Laboratory Costs for the Initial Year of Montana's SOAP (Contracted Services)

Mine	Surface Water	Ground Water	Sedimentation Ponds	Coal Analysis	Overburden Analysis
P.M. No. 3	--	\$1,235	\$160	--	--
Divide	--	1,235	160	--	--
Coal Creek (existing)	\$1,000	1,235	80	--	--
Coal Creek (expansion)	--	825	80	--	\$1,300
Hathaway	--	825	80	--	--
Warburton (existing)	--	825	80	--	--
Warburton (expansion)	--	825	80	\$ 50	325
Bridger	--	1,235	--	150	325
TOTALS	\$1,000	\$8,240	\$720	\$200	\$1,950
GRAND TOTAL = \$12,110					

Table 4 - Costs for the Writing of Reports, Equipment and Materials for the First Year of Montana's SOAP (Contracted Services)

Mine	Professional Writing	Typing	Drafting of Maps.	Crest Gages	Rain Gages	Binding & Copying of Reports
P.M. 3	\$800	\$120	\$120	\$60	\$150	\$100
Divide	800	120	120	60	150	100
Coal Creek	800	120	120	60	150	100
Hathaway	600	60	120	30	150	100
Warburton	800	120	120	60	150	100
Bridger	800	120	120	--	150	100

TOTALS \$4,600 \$660 \$720 \$270 \$900 \$600
 GRAND TOTAL = \$7,750

Hathaway
 Warburton
 Coal Creek
 Bridger
 Divide
 P.M. 3

III. Federal Form 424 - Operational Grant Application
for Montana's SOAP

FEDERAL ASSISTANCE

- PREAPPLICATION
 APPLICATION
 NOTIFICATION OF INTENT (507)
 REPORT OF FEDERAL ACTION

1. APPLICANT: MONTANA
 2. FUNDING: \$ 57,335
 3. DATE: 19 79 11 14

4. STATE: MONTANA
 5. FEDERAL EMPLOYER IDENTIFICATION NO.: N/A
 6. DATE ASSIGNED: 19

LEGAL APPLICANT/RECIPIENT:
 Agency Name: Montana Dept. of State Lands
 Agency Address: Reclamation Division, Capitol Station, Helena, Montana
 County: Lewis & Clark
 ZIP Code: 59601

7. PROGRAM: Operational grant pursuant to 507(c) of P.L. 95-87 and 30 CFR 795.
 8. TYPE OF APPLICANT/RECIPIENT: A-Other (Specify):

9. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT:
 Operational grant for the development of a Small Operator Assistance Program pursuant to Section 507 of P.L. 95-87

10. TYPE OF ASSISTANCE: A-Grant
 11. ESTIMATED NUMBER OF PERSONS BENEFITING: 750,000
 12. TYPE OF APPLICATION: A-New

13. AREA OF PROJECT IMPACT: ENTIRE STATE

14. TYPE OF CHANGE: N/A
 15. EXISTING FEDERAL IDENTIFICATION NUMBER: N/A

13. PROPOSED FUNDING		14. CONGRESSIONAL DISTRICTS OF:	
FEDERAL	\$ 57,335	APPLICANT	statewide
APPLICANT		PROJECT	statewide
STATE		PROJECT START DATE	19 79 11 14
LOCAL		PROJECT DURATION	12 Months
OTHER		ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY	19 79 11 14
TOTAL	\$ 57,335		

16. FEDERAL AGENCY TO RECEIVE REQUEST: Office of Surface Mining, Denver, Colorado 80202

17. REMARKS ADDED: Yes No
 18. THE APPLICANT CERTIFIES THAT: (1) N/A

19. CERTIFYING REPRESENTATIVE: Leo Berry, Jr., Commissioner MT Department of State Lands

20. DATE SIGNED: 19 79 11 14
 21. SIGNATURE: [Signature]

22. AGENCY NAME: [Blank]

23. FEDERAL APPLICATION IDENTIFICATION: [Blank]

24. ORGANIZATIONAL UNIT: [Blank]

25. FEDERAL GRANT IDENTIFICATION: [Blank]

26. ADDRESS: [Blank]

27. ACTION DATES: 19
 28. CONTACT FOR ADDITIONAL INFORMATION: [Blank]

27. ACTION TAKEN		28. FUNDING	
AWARDED		FEDERAL	\$
POSTED		APPLICANT	
RETURNED FOR AMENDMENT		STATE	
DEFERRED		LOCAL	
WITHDRAWN		OTHER	
TOTAL		TOTAL	\$

29. FEDERAL AGENCY HAS OFFICIAL: [Blank]

30. FEDERAL AGENCY TO RECEIVE REQUEST: [Blank]

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)
PART II - BUDGET DATA

Object Class Category	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)
1. Personnel			0
2. Fringe Benefits			0
3. Travel			0
4. Equipment			0
5. Supplies			0
6. Contractual			\$57,335
7. Construction			0
8. Other			0
9. Total Direct Charges			\$57,335
10. Indirect Charges			0
11. TOTAL			\$57,335
12. Federal Share			\$57,335
13. Non-Federal Share			
14. Program Income			

15. Detail on Indirect Costs: N/A

Type of Rate (Mark one box)

Provisional Predetermined

Final Fixed

Rate _____ % Base \$ _____ Total Amount \$ _____

PART III

Program Narrative Statement
(Attach additional sheets, if necessary)

Refer to the accompanying cover letter for narrative explanation and details of above cost figure.

IV. Federal Form 424 - Administrative Grant Application
for Montana's SOAP

FEDERAL ASSISTANCE

2. APPLICANTS APPLICATION	a. NUMBER	3. STATE APPLICATION IDENTIFIER	a. NUMBER
	b. DATE Year month day		b. DATE Year month day

Leave Blank	ASSIGNED	19
-------------	----------	----

TYPE OF ACTION

REAPPLICATION

APPLICATION

(Mark appropriate box)

NOTIFICATION OF INTENT (Opt.)

REPORT OF FEDERAL ACTION

4. LEGAL APPLICANT/RECIPIENT

a. Applicant Name : MT Department of State Lands

b. Constituting Unit : Reclamation Division

c. Street/PO Box : Capitol Station

d. City : Helena,

e. State : Montana

f. Contact Person (Name & Telephone No.) : Lewis & Clark

g. ZIP Code : 59601

5. FEDERAL EMPLOYER IDENTIFICATION NO.

a. NUMBER

b. TITLE

Administrative grant pursuant to 507(c) of P.L. 95-87 & 30 CFR 795.

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

Administrative grant for the development of a Small Operator Assistance Program pursuant to Section 507 of P.L. 95-87.

8. TYPE OF APPLICANT/RECIPIENT

A-State
E-Indian Tribe
C-Substate District
D-County
E-City
F-School District
G-Special Purpose District

H-Continuously Active Agency
I-Higher Educational Institution
J-Indian Tribe
K-Other (Specify):

Enter appropriate letter **A**

9. TYPE OF ASSISTANCE

A-Basic Grant
B-Supplemental Grant
C-Loan
D-Insurance
E-Other

Enter appropriate letter(s) **JA**

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)

ENTIRE STATE

12. TYPE OF APPLICATION

A-New
B-Renewal
C-Revision
D-Continuation
E-Expansion

Enter appropriate letter **A**

11. ESTIMATED NUMBER OF PERSONS BENEFITING

750,000

14. CONGRESSIONAL DISTRICTS OF:

a. FEDERAL \$ 26,972 .00

b. APPLICANT statewide

c. STATE .00

d. LOCAL .00

e. OTHER .00

f. TOTAL \$ 26,972 .00

16. PROJECT START DATE Year month day

1979 11 14

17. PROJECT DURATION

12 Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day

1979 11 14

15. TYPE OF CHANGE (For 15c or 15d)

A-Increase Dollars
B-Decrease Dollars
C-Increase Duration
D-Decrease Duration
E-Cancellation
F-Other (Specify):

N/A

Enter appropriate letter(s)

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

Office of Surface Mining, Denver, Colorado 80202

19. EXISTING FEDERAL IDENTIFICATION NUMBER

N/A

21. REMARKS ADDED

Yes No

22. THE APPLICANT CERTIFIES THAT

a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached requirements if the application is approved.

b. If required by OMB Circular A-85 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: *yes/no*

(1) N/A

(2)

(3)

23. CERTIFYING REPRESENTATIVE

a. TYPED NAME AND TITLE

Leo Berry, Jr., Commissioner
MT Department of State Lands

b. SIGNATURE

c. DATE SIGNED

Year month day

19 79 11 14

24. AGENCY NAME

25. APPLICANT ACTION RECEIVED

19

26. FEDERAL APPLICATION IDENTIFICATION

27. REMARKS ADDED

Yes No

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL GRANT IDENTIFICATION

28. ADDRESS

29. STARTING DATE

19

31. ACTION TAKEN

a. AWARDED

b. REJECTED

c. RETURNED FOR AMENDMENT

d. DEFERRED

e. WITHDRAWN

32. FUNDING

a. FEDERAL \$.00

b. APPLICANT .00

c. STATE .00

d. LOCAL .00

e. OTHER .00

f. TOTAL \$.00

30. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

34. ENDING DATE

19

33. FEDERAL AGENCY A-85 ACTION

a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-85, it has been or is being made.

b. FEDERAL AGENCY A-85 OFFICIAL (Name and telephone no.)

37. REMARKS ADDED

Yes No

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

PART II - BUDGET DATA

Object Class Categories	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)
1. Personnel			\$15,444
2. Fringe Benefits			2,696
3. Travel			3,072
4. Equipment			593
5. Supplies			100
6. Contractual			0
7. Construction			0
8. Other			2,346
9. Total Direct Charges			24,251
10. Indirect Charges			2,721
11. TOTAL			26,972
12. Federal Share			26,972
13. Non-Federal Share			
14. Program Income			

15. Detail on Indirect Costs:

Type of Rate (Mark one box)

Provisional

Predetermined

Final

Fixed

Rate 15 % Base \$ 18,139.68 Total Amount \$ 2,721

PART III

Program Narrative Statement
(Attach additional sheets, if necessary)

All above figures have been rounded to the nearest dollar.

Refer to the accompanying cover letter for narrative explanation and details of above costs.

FEDERAL AGENCY
AND AGENCY

V. Relevant Letters Regarding SOAP

15-11-11
June 13, 1979

Mr. Don Crane
Regional Director
Department of the Interior
Office of Surface Mining
Old Post Office--downtown, Rm. 270
1823 Stout Street
Denver, CO 80202

Re: (Small Operator Assistance Program)

Dear Don;

This letter constitutes an initial response to your letter of May 10, 1979 regarding our grant application for administration of the Small Operator Assistance Program in Montana. The Department of State Lands definitely intends to administer this program. However, our grant application to you has been delayed somewhat due to uncertainties regarding some of the information requests on page 2 of your May 10 letter. A discussion between Ms. Maggie Koperski and Mr. Neil Harrington of this office indicated that additional information on various aspects of the application format and content would be forthcoming from OSM in a week or two. Thus, we have decided to wait on our grant application submittal until such time as that information is received.

Sincerely,

Leo Berry, Jr., Commissioner
Department of State Lands

JH:lw

DEPARTMENT OF STATE LANDS

MAILING ADDRESS: CAPITOL STATION
OFFICE: 1625 11TH AVENUE

HELENA 59601

(406) 449-2074

STATE BOARD OF
COMMISSIONERS

THOMAS L. JUDGE
GOVERNOR

GEORGIA RICE
DEPT. OF PUBLIC INSTRUCTION

FRANK MURRAY
SECRETARY OF STATE

MIKE GREELY
TREASURER GENERAL

"SONNY" CMHOLT
AUDITOR

March 28, 1978

Mr. Walter Heine, Director
Office of Surface Mining
Department of the Interior
Room 7348
18 & C Streets NW
Washington, D.C. 20204

Re: Initiation of a Small
Operator Assistance
program in Montana

Dear Mr. Heine,

Pursuant to 30 CFR Part 795, Montana elects to receive funding and commence the administration of a Small Operator Assistance program in Montana. This program would be administered by the Montana Department of State Lands, the state agency responsible for the regulation of coal mining in Montana.

By August 3, 1978, the Department of State Lands intends to submit Montana's state reclamation program to the Secretary of Interior in accordance with the requirements outlined in Section 503 of P.L. 95-87. A summary description of actions taken to date to develop a state regulatory program in Montana are as follows:

1. The Department of State Lands has completed an initial review and comparison of the Montana and the Federal Coal Mine Reclamation Acts. With possibly a few exceptions the Department feels that the Montana Act already meets the minimum requirements in the Federal Act.
2. The Department has drafted and promulgated emergency rules that incorporated those portions of 30 CFR Parts 715, 716, and 717 not already specifically required in the Department's existing rules adopted pursuant to Montana's Act. These emergency rules represent a synthesis of the Department of State Lands' existing rules and O.S.M.'s initial regulatory period rules. Furthermore, such emergency rules probably represent a significant portion of the total work effort needed

SCHOOL

LANDS

MINING

RECLAMATION

to get Montana's program ready for submittal. Massive changes between the initial regulatory period rules for performance standards and O.S.M.'s final rules for performance standards are not anticipated (copy enclosed).

3. The Department of State Lands has submitted a grant application to O.S.M. for cost reimbursement for administering the initial regulatory program. If the requested grant monies are received it will allow the Department to add additional administrative and technical personnel to its staff and to increase the funding level for travel, equipment, and existing staff services. It is felt that a well funded program for the administration and enforcement of the initial regulatory program will assist the Department's program development effort.
4. Through meetings and phone conversation, the Department of State Lands has established a working relationship with members of O.S.M.'s regional and Washington staffs. The Department has met and will continue to meet officials regarding a modification of Montana's cooperative agreement to comply with the initial regulatory procedures as set forth in Section 502 of P.L. 95-87. The Department has also met with the representatives of the U.S. Geological Survey and the Bureau of Land Management in an attempt to work out methods to avoid duplication of the permit review process.

As stated earlier, Montana intends to submit its state program to O.S.M. by August 3, 1978. Such a program will be as complete as is possible at that time. The program will contain the requirements set forth in Section 503 of P.L. 95-87 including any proposed statutory changes needed to bring Montana's Act into compliance with the Federal Act. Such legislation will be submitted for consideration to Montana's state legislature when it convenes in January of 1979. In preparing Montana's program, the Department of State Lands will utilize the most current set of O.S.M.'s draft, proposed or final rules implementing P.L. 95-87.

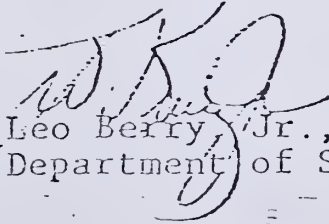
A summary schedule of actions to be taken to develop Montana's state regulatory program for approval are as follows:

1. By May 20, the Department of State Lands intends to publish a proposed set of new rules for the Montana Strip and the Underground Mine Reclamation Act. These rules will implement P.L. 95-87 to the extent possible without changing Montana's Act. These revised rules will represent a modified and expanded version of the emergency rules adopted by the State Board of Land Commissioners on March 20, 1978. Hearings on the new rules will be held in June 1978, and the rules will be adopted by July 20, 1978.

2. Between March 24 and May 17, the Department will be preparing an outline of any legislative, staffing, and rules changes necessary to establish a process for the designation of lands unsuitable for coal mining. In establishing such a process, the Department will work closely with the Missouri River Basin's Western Coal Planning Assistance Project, with Joe O'Connor of the U.S.G.S.'s R.A.L.I. program and with the O.S.M. staff. The Department of State Lands will participate in the Suitability/Unsuitability designation workshop sponsored by R.A.L.I. and O.S.M. from May 17-20, 1978. The Department hopes to present its proposed "designation" program at this workshop.
3. Prior to May 31, 1978, the Department will submit to O.S.M. a grant application for program development. Costs to be included in this grant application will include the additional staffing, equipment, and travel costs required to comply with Section 503 of P.L. 95-87. Because Montana elects to administer the Small Miner Assistance Program, it will include funding for such a program in its program development grant.
4. During June and July of 1978, the Department will be drafting any necessary statutory changes required to bring Montana's Act up to the standards of P.L. 95-87. The Department anticipates a response from O.S.M. as to the adequacy of such changes prior to the convening of Montana's legislature in January 1979.

Please call or write if additional information is required to initiate a Small Miner Assistance Program in Montana.

Sincerely,


Leo Berry, Jr., Commissioner
Department of State Lands

BH/lw

cc: Brace Hayden

John North

Dick Juntunen

Bob Yuhnke

enclosure

a proposed set of new rules for the Montana State Underground Mine Reclamation Act. These rules will implement P.L. 95-87 to the extent possible without changing Montana's Act. These revised rules will be an modified and expanded version of the emergency rule adopted by the State Board of Land Commissioners on June 20, 1978. Hearings on the new rules will be held in June 1978, and the rules will be adopted by July 20,

q. Portions of Montana's Permanent Program Rules and Regulations that Apply to Underground Coal Mines

The following is a rule-by-rule analysis of which portions of Montana's Permanent Program Rules and Regulations apply to underground coal mines. As with surface mines, even though a rule or portion of a rule may be applicable to underground mining, it may not be applicable to an individual mine. If a portion of a rule is not applicable to an individual mine, the applicant should state that it is not applicable, and the reason it is not applicable. Other rules, such as Rule IV, (roads), are only applicable to the above ground portion of an underground mine.

The permit area of an underground mine includes all areas where the surface is disturbed and those areas under which the coal is removed. Unless the applicant can show to the Department's satisfaction that there will be no surface effects over the area which coal is removed (i.e. there will be no subsidence) the baseline studies outlined in the Act and rules will be required for these areas. Any areas where there will be subsidence will be treated as a surface disturbance.

Rule I - (Definitions)

All

Rule II - (Strip Mine Application Requirements)

1 All
2 All
3 All
4a(i) For surface disturbances
4a(ii) All
4b All
4c Not applicable
4d For surface disturbance
4e All
4f All
4g All
4h All
4i Not Applicable
4j All
4k All
4l All
4m All
4n All
4o All
4p For reclamation
5 All
6 All

Rule III - (Application Review Process)

All

Rule IV - (Mining, Backfilling and Grading)

- 1a All
- 1b All
- 1c All (as outlined in Rule XVIII)
- 1d Surface disturbance
- 1e if applicable for surface disturbance
- 1f if applicable for surface disturbance
- 1g if applicable for surface disturbance
- 1h All (additional requirements in Rule XVIII)
- 1i All
- 1j All
- 1l All
- 1m Not applicable
- 1n Not Applicable
- 1o Not applicable
- 1p All
- 2 Not applicable
- 3 All
- 4 All
- 5 All
- 6 All
- 7 All (with respect to development wastes and other non-coal wastes)
- 8 All
- 9 All
- 10 All

Rule V - (Roads and Rail Loops)

All (for surface facilities, ramp roads and other roads strictly related to surface mining are not applicable)

Rule VI - (Use of Explosives)

All - If explosives are used.

Rule VII - (Hydrology)

- 1 All
- 2 All
- 3 All (sediment control is not needed for areas on which the surface is not disturbed, i.e. areas over underground workings. However, all water from underground workings must meet the provisions of this section).
- 4 Applicable only to surface disturbances or subsided areas.
- 5 All where used to divert water around surface disturbances.
- 6 All for surface disturbance
- 7 All for surface disturbances
- 8 All

- 9 All
- 10 All if applicable
- 11 All
- 12 All
- 13 All
- 14 All
- 15 All
- 16 All
- 17 All
- 18 All
- 19 All

Rule VIII - (Topsoil)

All for surface disturbances

Rule IX - (Revegetation)

All for surface disturbance

Rule X - (Protection of Fish, Wildlife & Related Environmental Values)

All

Rule XI - (Air Resources Protection)

All for surface disturbances

Rule XII - (Post Mining Land Use)

All for surface disturbances

Rule XIII - (Coal Conservation)

All

Rule XIV - (Alluvial Valley Floors)

All

Rule XV - (Prime Farmland)

All

Rule XVI - (Alternate Reclamation)

All for surface disturbances

Rule XVII - (Auger Mining):

Not Applicable

Rule XVIII - (Underground Mining)

All

Rule XIX - (Prospecting)

Applies to all prospecting

Rule XX - (Bonding)

All

Rule XXI - (Annual Reports)

All

Rule XXII - (Areas upon which coal mining is prohibited)

All

Rule XXIII - (Designation of Land Unsuitable for Coal Mining)

All

Rules XXIV through XXXI are primarily administrative and are applicable to all coal mining.

Not Applicable

r. Montana's use of Section 30 CFR 731.13 (state window)

Montana utilized the "state window" with regards to Section 515(b)(2) of P.L. 95-87. Section 515(b)(2) requires that all surface coal mining and reclamation operations:

restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood. . .

Montana feels that the provisions of 82-4-233 MCA achieve the same goals as 515(b)(2); returning the land to a productive use, and achieving stability with respect to erosion in a manner which is better suited for Montana's arid lands. Section 82-4-233 MCA states:

Planting of vegetation following grading of disturbed area. (1) After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees as are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

- (a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife at least comparable to that which the land could have sustained prior to the operation;
- (b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and
- (c) preventing soil erosion to the extent achieved prior to the operation.

The state legislature adopted post-mining land use provisions of 82-4-233 in 1973 and Montana feels that the Act as it is presently written is more environmentally protective with regards to post-mining land use than the corresponding federal language in Section 515(b)(2).

This is because Montana's post-mining vegetation make-up (rangeland capable of supporting livestock and wildlife grazing pressure comparable to that which the land could have sustained prior to mining), will be stable without any further (or continuous) inputs from man. Montana's Act does however, also provide the ability to allow cropping or other, "higher uses", of a mined area under the alternate reclamation provisions of its Act. For the implementation of this section, Montana has adopted the criteria of 515(b)(1) -- (see 82-4-232 MCA and DSL's permanent program rule XVI).

Eastern Montana has considerable marginal farmland. This land has historically been cultivated during periods when grain prices are high and thus abandoned (allowed to "go back"), when grain prices are low (most of Montana's existing coal mines contain "go back" land). When cultivation has ceased "go back" such lands historically have been without protective vegetative cover and have suffered a decrease in their productive capabilities as a result of wind and water erosion. If Montana were to allow an area to be reclaimed to cropland on the basis that it was cropland prior to mining, areas could be reclaimed to cropland which under less favorable economic conditions could not be profitably cropped and thus abandoned. This abandonment could result in erosion and a long-term decrease in productive capability.

By requiring that land be reclaimed to rangeland, Montana is assured that the land will be productive regardless of the agricultural economics at the time of bond release. Many rangeland species in the Northern Great Plains have evolved on sites under indigenous climatic conditions. Furthermore, they have evolved under natural grazing pressure and have proven themselves able to withstand grazing by cattle.

By restricting non-rangeland reclamation to only those areas approved in accordance with Montana's alternate revegetation provisions, the Department can assure that such areas will be capable of maintaining the alternate use over the long-term.

In summary, Montana's revegetation procedures are essentially the same as in the Federal Act, except that if the premining land-use is a use other than rangeland such a use must be carefully justified to DSL before it can be replaced after mining. In this way, land uses which were not suited to the land will be eliminated.

8. Statistical information on Montana coal mining and prospecting operations [30 CFR 731.14(h)]

a. Coal tonnage

Annual coal tonnage produced in Montana for each of the past three years is as follows:

1976 - 26,180,671 tons
1977 - 27,393,436 tons
1978 - 26,679,174 tons

The source of this data is the Workmens Compensation Division of the Montana Department of Labor and Industry (Capitol Station, Helena, MT 59601). Each operating coal mine in Montana is required to report their tonnage figures on a monthly basis to the Workmens Compensation Division.

b. Number of mines and mine locations

Since the Montana Strip and Underground Mine Reclamation Act was passed in 1973, (Title 82, Chapter 4, Part 2, M.C.A.) 11 coal mines have been permitted by the Department of State Lands. These mines are listed in Table 2 and are located on Figure 4. All of Montana's existing coal mines are producing or will produce subbituminous coal with the exception of Knife River Coal Co.'s Savage Mine, which produces lignite. The only underground coal mine permitted in Montana is Beartooth Coal Co.'s mine in Carbon County. To date, (June 30, 1979) no coal has yet been produced from the Beartooth operation.

c. Acreage for mine permits and prospecting permits

The total area permitted for strip or underground coal mining operations in Montana as of June 30, 1979 is 20,393 acres. A company by company breakdown for the past 3 years is as follows:

June 30, 1976 - December 31, 1976

<u>Company</u>	<u>Acres permitted</u>
Decker	2,810
Western Energy	4,495
Westmoreland	1,317
Peabody	1,234
Knife River	477
Divide	8
P.M.	12
TOTAL	10,353

January 1, 1977 - December 31, 1977

<u>Company</u>	<u>Acres permitted</u>
Decker	7,427
Western Energy	5,628
Westmoreland	1,320
Peabody	1,234
Knife River	565
Divide	8
P.M.	14
TOTAL	16,196

January 1, 1978 - December 31, 1978

<u>Company</u>	<u>Acres permitted</u>
Decker	7,514
Western Energy	5,666
Westmoreland	2,157
Peabody	1,234
Knife River	565
Divide	43
P.M.	14
Coal Creek	21
Beartooth	98
TOTAL	17,312

January 1, 1979 - June 30, 1979

<u>Company</u>	<u>Acres permitted</u>
Decker	7,515
Western Energy	5,666
Westmoreland	2,157
Peabody	1,280
Knife River	565
Divide	43
P.M.	100
Coal Creek	21
Beartooth	98
Warburton	10
Spring Creek	2,938
TOTAL	20,393

Table 2 - Montana Coal Mines, Existing & Proposed (August 3, 1979)

I. Existing Mines

<u>Name</u>	<u>County</u>	<u>1978 prod.</u>	<u>Type of Mine</u>	<u>Coal Class</u>
Decker - West Pit	Bighorn	6,855,423	Surface	Subbituminous
Decker - East Pit	Bighorn	2,312,215	Surface	Subbituminous
Western Energy Co.	Rosebud	10,565,750	Surface	Subbituminous
Westmoreland	Bighorn	4,549,558	Surface	Subbituminous
Peabody	Rosebud	2,080,414	Surface	Subbituminous
Knife River	Richland	288,708	Surface	Lignite
Divide	Musselshell	8,984	Surface	Subbituminous
P.M.	Musselshell	9,877	Surface	Subbituminous
Coal Creek	Powder River	8,245	Surface	Subbituminous
Spring Creek	Bighorn	--	Surface	Subbituminous
Warburton	Blaine	--	Surface	Subbituminous
Beartooth	Carbon	--	Under-ground	Subbituminous

II. Proposed New Mines

<u>Name</u>	<u>County</u>	<u>Permit Application Date.</u>	<u>Type of Mine</u>	<u>Coal Class</u>
Shell Oil Co.	Bighorn	August, 1977	Surface	Subbituminous
Consolidation Coal Co.	Bighorn	anticipated in 1980	Surface	Subbituminous
Western Energy Co.	Custer	anticipated in 1980	Surface	Subbituminous
Hathaway Coal Co.	Custer	11/21/78	Surface	Subbituminous
Dreyer Brothers (Burlington Northern)	McCone	anticipated in 1980	Surface	Lignite
Montco		August 1980		
Squirrel Creek				

d. Geographic distribution of Montana coal mining and prospecting areas

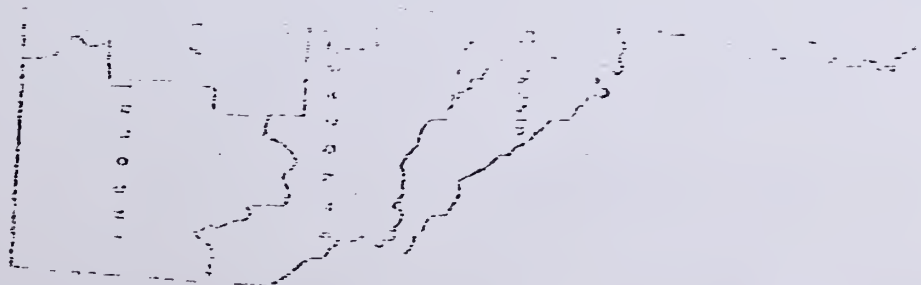
Figure 4 on the next page shows the geographic distribution, by county, of existing underground and surface mining activities, for the period immediately preceding submission of Montana's proposed permanent program.

The approximate total area approved and permitted for coal prospecting in Montana for the past 4 years is as follows:

1976	45 permits	691.2 acres
1977	47 permits	983.1 acres
1978	44 permits	1392.1 acres
1979 (thru 6/30)	44 permits	1251.3 acres

The number of acres disturbed by prospecting holes was determined by dividing the number of drill holes permitted by 10, as one drill hole equals approximate .10 acres.

Coal exploration permits expire at the end of one year from the date of issuance unless renewed by the company. Bonds, however, are retained on each hole drilled until such time that it is determined that all reclamation requirements have been met.



e. Number of permits issued during the last three years

The number of strip coal mining permits and permit renewals issued by the Department of State Lands (DSL) pursuant to the Montana Strip and Underground Mine Reclamation Act for each of the past three years is as follows:

1976	10 permits	8 renewals
1977	10 permits	10 renewals
1978	12 permits	2 renewals

The department has not in the past issued permit revisions as it had no statutory authorization for doing so. All applications for increase or decrease in the size of a permit area were handled as new permits (see 82-4-225, M.C.A. in Appendix A). The Montana Strip and Underground Mine Reclamation Act was revised by the 1979 legislature to allow for permit revisions consistent with the Federal Act (see Section 5 of S.B. 515 in Appendix A).

Beginning in 1977, all coal permits and renewals were issued for a 5-year period. Also a consolidation of permits for each mine occurred during 1977-1978.

The number of coal prospecting permits, revisions, and renewals issued by DSL pursuant to the Montana Strip and Underground Mine Reclamation Act for each of the past three years is as follows:

1976	17 permits	31 amendments	34 renewals
1977	14 permits	36 amendments	37 renewals
1978	13 permits	29 amendments	35 renewals

A coal prospecting permit amendment is issued when a company adds holes or changes hole locations to an existing permit.

f. Frequency of DSL mine inspections during the interim program

The number of mine inspections conducted at each mine permitted under the Montana Strip and Underground Mine Reclamation Act between May 7, 1978 and June 30, 1979 are as follows:

Decker (West Pit) - 19	Divide - 9
Decker (East Pit) - 17	P.M. - 8
Knife River - 7	Coal Creek - 9
Western Energy - 17	Beartooth - 6
Peabody - 19	Warburton - 1
Westmoreland - 18	Spring Creek - 1

g. Status of reclamation on surface coal mines and coal prospecting operations

As of June 30, 1979, there were 38 permits (20,393 acres), for coal mining activities in Montana (see 82-4-221, M.C.A.). These permits were issued for 11 separate mines. Bond has been released on none of the permits and therefore no coal mine acreage has been totally reclaimed in accordance with the Montana Strip and Underground Mine Reclamation Act (see 82-4-232 through 234, M.C.A.). Each coal company is required to submit a planting report at least 60 days prior to permit expiration (see 82-4-235). According to the latest planting reports received by the Department, 2,292 acres have been regraded, retopsoiled, and reseeded since the Act's passage in 1973. Regrading has begun at all surface mines with the exception of those permitted in the past year (Warburton and Spring Creek).

As of June 30, 1979, there were 44 active coal prospecting operations in Montana. The number of coal prospecting permits being actively reclaimed as of June 30, 1979 is 48. This later figure was calculated as the sum of active prospecting permits plus those permits which have expired during the last two years.

Reclamation is virtually complete on 90 of the coal prospecting permits issued since this passage of the Montana Strip and Underground Mine Reclamation Act in 1973. This sum represents the number of permits that have expired in the past 2-6 years. Total bond has been released on no coal exploration permits to date, although on some only a very small amount is still being held by DSL.

h. Proposed future coal production and future production areas

Projected demand for Montana coal for the next 20 years is shown in Table 3. It is assumed that demand projections will be met by expansions of existing mines and by the opening of new mines. All but a very small fraction of Montana's production in the next 20 years will come from surface coal mines and all but a very small amount will be consumed by electric utilities. More than 98% of Montana's coal production in 1978 was subbituminous (see Table 2) and it is anticipated that at least 90% of Montana's coal production in the year 2000 will also be subbituminous. A listing of existing and proposed coal mines in Montana is given in Table 2).

Projected geographic distribution of coal prospecting and surface coal mining and reclamation operations in Montana for the next 3-5 years are shown on Figure 4.

Table 3 Projected demand for Montana coal--1980-2000^{1/}

Year	Out-of-State Demand		Montana Demand
		million tons/yr.	million tons/yr.
1980		27.3	3
1985	low	28.3	4-10
	med.	35.3	
	high	45.8	
1990	low	40.0	4-10
	med.	48.5	
	high	62.5	
2000	low	55.0	?
	med.	68.0	
	high	88.0	

^{1/}Source: "Electric utility coal demand scenarios for the Montana Energy Model: by Terry Wheeling for the Montana Energy Research and Development, Inc. May 1978.

9. Existing and proposed program staffing levels

a. Interim program staffing levels

At present, 15 members of DSL's Reclamation Division (14 FTE's) and 3 members of the Centralized Services Division spend at least part of their time involved with Montana's coal reclamation program. This total does not include the employee responsible for administering Montana's Abandoned Mine Land Program. In addition, the Commissioner of State Lands and 2 members of his staff have partial coal program duties. Table 1 (in Section 5) lists departmental positions involved with DSL's coal and Abandoned Mine Land programs and the function and minimum qualifications for each position. Four positions (3 FTE's) in the Reclamation Division are currently funded by OSM under Interim Program grant pursuant to 30 CFR Part 725. One position is funded under a Cooperative Agreement with OSM for Abandoned Mine Land Reclamation planning.

The Montana Department of Health and Environmental Sciences (DHES) analyzes water quality samples collected from coal mine areas and as such has a small, but important role to play in the administration of Montana's interim coal program. A description of this role and DHES staffing levels are described in Section 5 (pages 12-15).

b. Permanent program staffing levels

Four more full-time individuals will be added to Montana's coal program for the administration of the permanent regulatory program -- three in the Reclamation Division of the Department of State Lands (DSL) and one in the Environmental Sciences Division of the Department of Health and Environmental Sciences (DHES). Funding for these 4 positions will be sought from OSM under a program administration grant pursuant to 30 CFR 740.

The three positions to be added to the DSL Reclamation Division staff include a blasting specialist, an administrator for Montana's SOAP program, (hydrogeologist) and either a wildlife biologist or a plant ecologist.

The one position added to the DHES Environmental Sciences Division would be an air quality specialist. For the sake of government efficiency, the air quality specialist would be hired by DHES and would be part of DHES's staff, however he or she would be permanent assigned to DSL's Reclamation Division and his (or her) office would be in the DSL building. Day to day direction for the employee would come from the Reclamation Division of DSL (permit review, inspection schedules, etc.) while general direction and training would come from the Air Quality Bureau of DHES.

10. Description of staffing adequacy [30 CFR 731.14(g)]

Section 5 describes the structural organization and duties of the Department of State Lands (DSL) with regards to Montana's existing and proposed coal programs; Section 9 and Table 1, (page 11) describes Montana's existing and proposed staffing levels for its coal program.

a. Existing staff (interim regulatory program)

Excluding members of the DSL Commissioner's staff the DSL Centralized Services Division there are at present 15 DSL employees (14 FTE's) in the DSL Reclamation Division who spend at least part of their time involved with the initial regulatory program. The positions are listed below and in Table 1:

1. Administrator, Reclamation Division
2. Assistant Administrator, Reclamation Division
3. Chief, Coal & Uranium Bureau
4. Mine Engineer, Coal & Uranium Bureau
5. Office Supervisor, Billings office
6. Hydrogeologist, Coal & Uranium Bureau
7. Hydrogeologist, Coal & Uranium Bureau
8. Plant Ecologist, Coal & Uranium Bureau
9. Range Scientist, Coal & Uranium Bureau
10. Geologist, Coal & Uranium Bureau
11. Soil Scientist, Coal & Uranium Bureau
12. Permit Analyst, Coal & Uranium Bureau
13. Administrative Secretary, Reclamation Division
14. Clerk Typist, (Helena), 1/2 time position
15. Clerk Typist (Billings), 1/2 time position

Percentages of time spent on inspection and enforcement, coal mine permit evaluation, and other duties, respectively for each of these 15 employees are given in Table 1. For the interim regulatory program 2.90 FTE's are devoted to coal mine inspection and enforcement, 4.65 FTE's are devoted to coal mine permit evaluation and 3.5 FTE's are devoted to either uranium permitting duties or other coal duties (primarily administrative or prospecting). Included in these figures is the .05 FTE spent on enforcement activity by DSL's chief legal counsel.

The Laboratory Division of the Department of Health and Environmental Sciences (DHES) is the only part of DHES that has a direct role to play in the administration of Montana's coal program during the initial regulatory period. DSL depends upon the Laboratory Division to analyze water quality samples collected from drainageways, sediment ponds, and other areas on or adjacent to coal mines. Less than .05 FTE's are currently devoted to the analysis of such samples and the Laboratory Division's staffing level is adequate for such purposes (see pages 12-15).

Montana's Small Operator Assistance Program (SOAP) will soon be administered by one full-time individual. A description of the administrative and contractual aspects of Montana's SOAP program for the first year are given in Section 7, (page 46ff). Because a large aspect of the SOAP program would be to determine the probable hydrologic consequences of a small operator's proposed mining plan, DSL will hire a hydrogeologist as its SOAP administrator. This individual will coordinate with other Reclamation Division employees regarding the preparation of a statement of the results of test borings or core samples.

The Assistant Administrator of the Reclamation Division is responsible for development of Montana's Designation of Lands Unsuitable Program. Some of the workload under this program will initially be contracted out (see Section 7k). The Assistant Administrator is also a key liaison with OSM, serves as a wildlife biologist for the Reclamation Division and handles occasional inspection duties.

b. Proposed staff (permanent regulatory program)

The positions and duties described in Section 10(a) above would all be retained in Montana's coal program when it administers the permanent regulatory program. In addition, four more full-time individuals will be added to the program -- three in the Reclamation Division of DSL and one in the Environmental Sciences Division of DHES (see page 66). These four positions include:

16. an administrator of Montana's SOAP program
17. either a wildlife biologist or a plant ecologist, Coal & Uranium Bureau
18. a blasting specialist, Coal & Uranium Bureau
19. an air quality specialist, Coal & Uranium Bureau

The minimum qualifications for each of these individuals are shown in Table 1. In addition to their specific professional duties these four individuals will help ease the increased workload burden on the entire coal program staff after Montana's permanent regulatory program is approved.

For the Montana proposed permanent regulatory program, the percentages of time spent on inspection and enforcement, coal mine permit evaluation, and other duties respectively for each of the 19 employees listed above are given in Table 1. For the permanent regulatory program, 3.80 FTE's will be devoted to coal mine inspection and enforcement, 6.75 FTE's will be devoted to permit review, and 3.75 FTE's will be devoted to uranium permitting duties or other coal duties (primarily administrative or prospecting). Included in these figures is the .05 FTE spent on enforcement activity by DSL's chief legal counsel.

Based on past experience, the Department of State Lands feels that such FTE levels for coal mine inspection and enforcement and for permit review are adequate.

The adequacy of Montana's existing coal program may be judged by the number of coal mine inspections conducted during the interim regulatory period. One-hundred and thirty-one inspections were conducted by DSL between May 7, 1978 and June 30, 1979. Montana had 9 approved coal mines at the start of this period and eleven at the end (see Section 8(f) and Table 2). This frequency of inspections far exceeded that required by Section 502 of P.L. 9587. Individual mine inspections often take a full day and often involve two or more inspectors.

Another way of judging the adequacy of Montana's existing staffing levels is the thorough manner in which permit applications are evaluated. Montana's Act allows DSL a maximum of 240 days of review after the receipt of a complete coal permit application (see 82-4-231, M.C.A. in Appendix A). An application is considered complete when a company has submitted data and text showing that all the requirements of the Act and rules have been committed to and when it has been determined that the data submitted is of sufficient quality that the permit review process can be completed without the need for more information. It is a Departmental goal to send a letter informing the company of permit deficiencies within 60 days of the receipt of the receipt of the application; such letters often run to 30 pages or more.

Several meetings between company and coal bureau personnel occur during the course of a permit review. It is a common practice for our hydrologist or soil scientist to spend a day with his company counterpart to work on such technical aspects of a mining plan as drainage designs or alternative methods of highwall reduction.

The education and experience requirements for the positions listed in Table 1 also reflect on the adequacy of Montana's permanent program staffing. All 11 members of the Department's existing and coal and uranium bureau staff have at least a bachelors degree and 5 members have earned their masters. . .

The coal and uranium bureau is composed of competent staff members each of whom has training and experience in a technical field necessary for mine permit review and inspections. Such varied backgrounds provide an interdisciplinary approach to problem solving. On the larger coal mines, each member of the bureau's Helena staff reviews a permit application according to their area of expertise and field inspections are rotated among all coal bureau members on a regulator schedule. Considerable effort is expended on hiring of well qualified and hard working individuals. Minimum qualifications for employment in the coal and uranium bureau will remain just as high during the permanent program.

DSL will add staff members to its Reclamation Division as Montana's coal regulatory program demands increase. Funding for such new positions will come from state general fund monies and OSM permanent program grants. . . .

Based on past experience, the Department of State has to
such level for coal mine inspections and other activities
permit and review process.

11. Technical and professional personnel available from other agencies [30 CFR 731.13(1)]

DSL will use members of the Montana Department of Health and Environmental Sciences (DHES) Laboratory Division and Air Quality Bureau in its administration of the permanent program. DSL depends upon the Laboratory Division to analyze water quality samples collected from drainageways, sediment ponds and other areas on or adjacent to coal mines (see Section 5, page 12). Also, as a part of the permanent program an additional air quality specialist will be added to the staff of the Air Quality Bureau for the administration of the permanent program (see Sections 9 and 10). The air quality specialist's duties would include review of air quality measures for fugitive dust at each of Montana's coal mines and also over-site of coal mine air quality monitoring.

Other professional staff members of DHES's Air Quality and Water Quality Bureau's, while not having specific coal program duties, often advise members of DSL's Coal and Uranium Bureau on technical matters. A description of the duties of these two bureaus is given in Section 5.

Because DSL does not have an archaeologist on its staff it relies on permit application review in these regards from the staff of the State Historic Preservation Office (SHPO). The Montana SHPO has always been generously willing to assist DSL with regards to the protection of cultural resources. Its staff includes an archaeologist, a historian, and an historical architect.

Advice on technical matters is also occasionally sought from professional staff members of the U.S. Geological Survey, the Environmental Protection Agency and the Office of Surface Mining. Technical advice from OSM is an integral part of Montana's program and DSL views the regional staff in Denver as a staff extension when such expertise is needed.

Montana does not rely to a great extent on other agencies for staff assistance because it hires competent staff members, each of whom has training and experience in a technical field necessary for mine permit review and inspection (see Section 9 and 10). The depth of the department's in-house expertise is also the reason why DSL sees little need to enter into cooperative agreements with other agencies for staff support.

12. Budgetary summary for Montana's coal program [30 CFR 731.14(L)]

Table 4 gives a budgetary summary for Montana's coal program for the prior and current fiscal years, and the projected annual budget for each of the next 2 fiscal years. These budgets assume supplemental funding for permanent program administration under 30 CFR 740. Excluded from these figures are the proposed budgets for Montana's abandoned mine land reclamation program.

Tables 5, 6, 6a, and 6b give line-item cost break-downs for Montana's coal program for FY 1979 - FY 1982. Program budgets for FY 1981 and 1982 came from preliminary line-item estimates by DSL and are therefore subject to change. All budgetary data in this section are calculated for the State of Montana fiscal year which runs from July 1 to June 30.

Indirect costs included in the budget summaries amount to 15% of the funds budgeted for salary and benefits. Indirect costs include accounting and other bookkeeping expenses associated with DSL's administration of OSM grants. Such costs are incurred by DSL's Centralized Services Division, which has 3 staff members that spend part of their time on OSM related work.

Utilizing monies received under an interim regulatory program grant, DSL will soon contract out a study designed to determine how it should calculate indirect charges for future OSM grants. Indirect cost figures may be revised according to this study.

State funding for DSL's Reclamation Division comes from two sources: the state general fund and DSL's "Reclamation Account." The Reclamation Account is composed of permit and violation fees paid during 2 previous fiscal years. In FY 79, approximately 95 percent of Reclamation Division funding came from the general fund and approximately 5 percent came from permit fees and violations. Funding for the Commissioner and members of DSL's Centralized Services Division and Commissioner's staff involved with Montana's coal program comes from the state general fund.

Table 4 - Budgetary Summary of Montana's Coal Program for FY 1979 through 1982

Fiscal Year ^a	Source of Funds	Subtotal	Total
1979 ^b	State-----	\$221,078	\$351,078
	OSM - initial regulatory program-----	<u>130,000</u>	
1980 ^c	State-----	232,702	618,204
	OSM - initial regulatory program and permanent program administration-----	\$192,458	
	OSM - program development-----	150,966	
	OSM - SOAP-----	<u>42,078</u>	
1981 ^d	State-----	255,967	679,883
	OSM - permanent regulatory program-----	<u>423,916</u>	
1982 ^e	State-----	279,003	741,072
	OSM-----	<u>462,069</u>	

^aData are based on the State of Montana fiscal year which runs from July 1 through June 30.

^bA funding breakdown for FY 79 is given in Table 5.

^cA funding breakdown for FY 80 is given in Table 6.

^dA preliminary funding breakdown for FY-81 is given in Table 6a.

^eA preliminary funding breakdown for FY 82 is given in Table 6b.

Table 5. Line item summaries of Montana coal program for State FY 1979^a

	Subtotal	Total
<u>State Funding</u>		
Reclamation Division (9 FTE's)		
Salary-----	137,573	
Benefits-----	19,253	
Contracted services-----	6,232	
Supplies and materials-----	2,135	
Communication and transportation-----	2,622	
Travel-----	20,690	
Rent-----	675	
Repairs and maintenance-----	314	
Other expenses-----	225	
Equipment-----	135	189,854
Commissioner (.50 FTE)		
Salary-----	15,600	
Benefits-----	2,496	18,096
Chief Legal Council (.50 FTE)		
Salary-----	10,363	
Benefits-----	1,658	12,021
Centralized Services Division (.09 FTE)		
Salary-----	954	
Benefits-----	153	1,107
Total State funding-----		221,078
<u>OSM Funding (initial program grant)</u>		
Reclamation Division		
Salary-----	40,000	
Benefits-----	5,600	
Contracted services-----	5,000	
Supplies and materials-----	800	
Communication and transportation-----	-0-	
Travel-----	22,000	
Rent-----	-0-	
Repairs and maintenance-----	-0-	
Other expenses-----	600	
Equipment-----	56,000	
Total OSM funding-----		130,000

^aAll coal program funding for FY 79 was for the Montana Department of State Lands.

Table 6 -- Line item summaries of Montana coal program FY 80^{a/}

I. <u>State funding</u>	<u>Subtotal</u>	<u>Totals</u>
Reclamation Division		
Salaries	\$139,191	
Benefits	22,173	
Contracted Services	6,607	
Supplies & Materials	2,264	
Communication & Transportation	2,779	
Travel	12,373	
Rent	711	
Repair & Maintenance	333	
Other Expenses	12,668	
Equipment	<u>180</u>	
		\$199,279
Commissioner, DSL (.50 FTE)		
Salary	\$ 16,756	
Benefits	<u>2,681</u>	
		\$ 19,437
Chief Legal Council, DSL (.50 FTE)		
Salary	\$ 11,035	
Benefits	<u>1,766</u>	
		\$ 12,801
Centralized Services Division, DSL (.09 FTE)		
Salary	\$ 1,021	
Benefits	<u>164</u>	
		\$ 1,185
	Total State Funding	<u>\$232,702</u>

II. OSM funding

A. Initial regulatory program and permanent program administration

	<u>Subtotal</u>
Recl. Div. (DSL) & Env. Sciences Div. (DHES)	
Salary	\$ 76,753
Benefits	12,393
Contracted Services	30,000
Supplies & Materials	1,400
Communication & Transportation	--
Travel	25,000
Rent	5,040
Repair & Maintenance	--

^{a/} All coal program costs in Table 6 for FY 80 are for the MT Dept. of State Lands unless otherwise indicated.

II. OSM funding (continued)

	<u>Subtotal</u>
Other Expenses	\$ 4,500
Equipment	24,000
Indirect costs	13,372
	Total OSM funding \$192,458

B. Program development (federal share)

	<u>Subtotal</u>
Reclamation Division	
Salary	\$ --
Benefits	--
Contracted Services	98,827
Supplies & Materials	1,979
Communication & Transportation	--
Travel	14,400
Rent	--
Repair & Maintenance	--
Other Expenses	12,560
Equipment	23,200
Indirect Costs	--
	Total program Development \$150,966

C. Small Operator Assistance

Reclamation Division	
Salary	\$ 7,722
Benefits	1,348
Contracted Services	28,662
Supplies & Materials	50
Communication & Transportation	--
Travel	1,536
Rent	--
Repair & Maintenance	--
Other Expenses	1,104
Equipment	296
Indirect Costs	1,360
	Total Small Operator Assistance \$ 42,078

	Total OSM funding \$385,502
	Total Montana Program Funding for FY 1980 <u>\$618,204</u>

Table 6a -- Estimated line item summaries of Montana's coal program for FY 1981

I. State Funding

Reclamation Division		
Salaries	\$153,110	
Benefits	24,390	
Contracted Services	7,267	
Supplies & Materials	2,490	
Communications & Transportation	3,056	
Travel	13,610	
Rent	782	
Repair & Maintenance	366	
Other Expenses	13,934	
Equipment	199	
		\$219,204

Commissioner (.50 FTE)		
Salary	\$ 18,431	
Benefits	2,949	
		\$ 21,380

Chief Legal Counsel (.50 FTE)		
Salary	\$ 12,138	
Benefits	1,942	
		\$ 14,080

Centralized Services		
Salary	\$ 1,123	
Benefits	180	
		\$ 1,303

Estimated Total State Fund \$255,967

II. OSM Funding - Permanent Regulatory Program (includes SOAP)

Salary	\$109,000	
Benefits	17,440	
Contracted Services	164,560	
Supplies & Materials	1,650	
Communication & Transportation	--	
Travel	71,500	
Rent	20,800	
Repair & Maintenance	--	
Other Expenses	12,000	
Equipment	8,000	
Indirect Costs	18,966	

Total OSM Funding \$423,916

Total Montana Program Funding for FY 81 \$679,883

Table 6b -- Estimated line item summaries of Montana's coal program for FY 1982

I. State Funding

Reclamation Division		
Salaries	\$166,890	
Benefits	26,585	
Contracted Services	7,921	
Supplies & Materials	2,714	
Communications & Transportation	3,331	
Travel	14,835	
Rent	852	
Repair & Maintenance	399	
Other expenses	15,188	
Equipment	217	
		\$238,932
Commissioner (.50 FTE)		
Salary	20,090	
Benefits	3,214	
		\$ 23,304
Chief Legal Counsel (.50 FTE)		
Salary	13,230	
Benefits	2,117	
		\$ 15,347
Centralized Services		
Salary	1,224	
Benefits	196	
		\$ 1,420

Estimated Total State Fund \$279,003

II. OSM funding - Permanent Regulatory Program (includes SOAP)

Salary	\$118,810
Benefits	19,010
Contracted Services	179,370
Supplies & Materials	1,799
Communication & Transportation	--
Travel	77,935
Rent	22,672
Repair & Maintenance	--
Other Expenses	13,080
Equipment	8,720
Indirect Costs	20,673

Total OSM Funding \$462,064
 Total Montana Program Funding \$741,067

13. Physical resources available for use in Montana's coal program
[30 CFR 731.14(m)]

a. Office location and size

The Department of State Lands' main offices are located in Helena, Montana at 1625 11th Avenue (59601). Staff members involved with Montana's coal program occupy approximately 2000 square feet of floor space at this address. Because of staff growth as a result of Montana's administration of the Federal Strip Mine Act (see Sections 9 and 10), DSL's Reclamation Division needs additional office space and the owner of the building leased by DSL is adding an additional 2,800 square feet of floor space to the west side of the structure for the Division's use. The Helena office phone number is (406) 449-2074.

In addition to the Helena office, the Division also maintains a small field office in Billings, Montana at 1245 29th Street (59101). Its phone number is (406) 259-3264. Staff members involved with Montana's coal program occupy approximately 325 square feet of floor space at this address.

Section 10 lists the 19 Montana permanent coal program staff positions. These 19 individuals would have available to them approximately 5,125 square feet of office space in the Department's Helena and Billings offices. Assuming that approximately 1/2 this space would be utilized for file cabinets, meeting rooms, bookcases, equipment storage, etc., this would leave approximately 135 square feet per employee.

The Department of Health and Environmental Sciences' (DHES) main offices are also located in Helena. The Air Quality and Laboratory Division Bureau have their offices in the Capitol Office complex (Cogswell Building) and the Water Quality Bureau has its offices at 555 Fuller Avenue. Office space is adequate for existing staffing levels and additional office space will not be required for DHES employees under the permanent program since the one additional air quality specialist necessary will be located at DSL's Helena office (see Section 9). The Laboratory Division's chemistry laboratory, an important part of Montana's coal program is 5,600 square feet in size.

The Environmental Services Division of DHES has a field office in Billings, Montana located at 3304 2nd Avenue North.

b. Vehicles

The Department of State Lands currently owns 3 vehicles which are used exclusively by the Reclamation Division for coal mine and prospecting hole inspections. These include a 1975 1/2 tone Dodge pickup, 1976 Dodge 4-wheel drive Ramcharger and a 1976 1/2 ton 4-wheel drive Chevy pickup. In addition, the Department leases a 1975 Chevrolet Suburban from the Montana Department of Highways for use during coal mine and prospecting hole inspections. Occasionally, vehicles are checked out from the state motor pool when one of the above 4 vehicles are not available. Adequate motor pool vehicles are also available to the Department of Health and Environmental Sciences.

c. Equipment

Equipment owned by the Reclamation Division of DSL is listed in Table 7.

Table 7. Equipment owned by the Reclamation Division of the Department of State Lands

No.	Item	No.	Item
1	Noreclo Pocket Dictator	2	Hard hat w/light clip
1	H-P 97 Programmable Calculator	2	Battery pack & light
1	Conductivity Meter	2	Battery recharger (for self rescue)
1	Monroe 1930 Calculator	2	Belt (for self rescuer)
1	300 ft. steel chain	13 pr.	Safety glasses
1	Nikon F-2 camera w/accessories	11 pr.	Safety toes
1	Nikon 80-200mm 200m Lens	1	Filling tool kit
1	Nikkormat 1825 camera	1	CB radio w/antenna
2	Hach acid mine drainage kit	1	Salinity meter S-C-T
1	Dictating equip. w/transcriber	1	300 ft. steel engineers tape
1	Kodak slide projector	1	Kern one second theodolite
1	slide carousel	1	Wooden leg extension tripod
1	Prototype camera mount	1	Surveying altimeter
1	Drafting table	1	One mile autoranger EDM
1	Roll tracing unit	1	Aluminum extension leg tripod
1	Drafting stool	3	Triple lateral prisms
1	Nikon F-2 camera w/F2 lens	1	Tribach & tribach adapter
3	Kodak tele-instamatic camera	1	Seismometer
2	Olympus 35mm camera	1	Engineering seismograph
1	Sharp 808 calculator	1	Air wave detector
1	Abney level	1	Tripod
1	Polar planimeter	1	Drying oven (for vegetation)
1	Barrell auger	1	Top loader balance
2	Wooden stadia rods	1	Rolling disk planimeter
10	Live animal traps	1	60° trapazoidal flume
1	200 ft. steel tape	1	Old-Delft scanning stereoscope
2	100 link chain- 66 ft. lufkin	1	Water level measuring device
1	Loggers tape - 75 ft.	2 pr.	Rubber packs w/safety toes
1	Brunton pocket compass	1	Portable gas-powered winkle dri with rods and bit
1	K & E pocket compass		
2	Silva range compass		
1	Increment borer w/extra bit		
1	Sony T-66 cassette recorder		
1	Movie screen		
3	Hi lift jack		
1	Wilkie peilcompass		
CT.	Metal spikes		
1	Teledyne post drafting instr.		
1	Stereoscope		
2	Leitz hand levels		
1	Suunto PM-5 clinometer		
1	Range pole 2 sections		
2	Rod targets		
1	Rod level		
1	Leveling rod		
2	Self rescuers		

C. EQUIPMENT

Equipment owned by the State Lands Division of the Department of State Lands.

In addition to the items listed in table the Reclamation Division has an adequate number of desks, phones, typewriters, file cabinets and other office supplies and materials to efficiently maintain its two offices. Several pieces of equipment listed above were purchased with OSM interim enforcement grants pursuant to 30 CFR 725.

d. Additional vehicles and equipment needed for the permanent program

Additional vehicle and equipment purchases necessary for implementing the permanent program will include:

1. The computer hardware and software necessary for a data storage and retrieval system to implement a program for designating lands unsuitable for coal mining (see Section 7k).
2. An IBM Mag Card II Typewriter to aid secretarial efficiency within the Division.
3. At least one extra vehicle for mine and prospecting inspections (this would be necessary regardless of whether we sought coal program approval).
4. Additional desks, phones, etc., as new employees are added.

It is anticipated that the above will be purchased with OSM funding pursuant to 30 CFR 740.

14. Other programs administered by the
Montana Department of State Lands (30 CFR 731.14(0))

The Department of State Lands (DSL) has two primary duties; one is the management of state-owned lands, the second is administration of state and federal mined land reclamation statutes. In accordance with such duties, the Department is organized into a Land Administration Division, a Reclamation Division and a Centralized Services Division.

Individuals on the Commissioner's staff are administratively part of the Centralized Services Division.

DSL's Land Administration Division oversees the leasing, sale, exchange, improvements, and overall management of state-owned lands. The Land Administration Program is charged with the appraisal and reclassification of all state lands by identifying and utilizing multiple-use concepts.

DSL's Centralized Services Division is charged with providing the necessary administrative services for the department. The program processes in excess of \$15 million in trust income annually and also issues and maintains surface and mineral leases on 5,000,000 acres of school trust lands. The program is responsible for distribution of the interest and income received from lands and investments and for maintaining the permanent fund accounts involving \$35,387,642.18.

Part of the Commissioner's staff includes an Environmental Administrator and three environmental planners. These individuals prepare environmental assessments for the Department. An environmental impact statement is prepared on all major actions of the Department having a significant impact on the human environment.

The Reclamation Division of DSL administers Montana's mined land reclamation statutes including the Montana Strip and Underground Mine Reclamation Act (coal and uranium), the Montana Strip and Underground Mine Siting Act (coal and uranium), the Montana Opencut Mining Act (sand, gravel, scoria, bentonite, clay and phosphate) and the Montana Hard Rock Mining Act (metals).

The Opencut and Hard Rock Mining Acts require that a company receive approval on a mining and reclamation plan from DSL prior to the commencement of mining. Both Acts require a company to file a performance bond and charge DSL with conduction of inspections. Penalties are imposed for violations of either Act. The Montana Hard Rock Mining Act also requires that a company permit and bond exploration activity with DSL.

